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PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

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Dispersed public sector collective barga

STAFF REPORT NO. 21



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DISPERSED PUBLIC SECTOR COLLECTIVE
BARGAINING STATUTES

Objective: To provide information to the Personnel and Labor Relations
Study Commission on Study Question 23:

Should the state incorporate pertinent sections of
the statutes covering nurses and firefighters into
the Collective Bargaining for Public Employees Act
to avoid any question or argument over applicability
of the statutes?

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Introduction

There are currently three statutes covering public sector collective bargaining: Collective Bargaining for Public Employees, Title 39, Chapter 31, MCA; Collective Bargaining for Nurses, Title 39, Chapter 32, MCA; and Arbitration for Firefighters, Title 39, Chapter 34, MCA. This paper will (1) examine the major differences between the nurses' and firefighters' acts and the more general public employees' act, and (2) report on the desirability of incorporating pertinent sections of the nurses' and firefighters' acts in the public employees' act to avoid questions over the applicability of the statutes.

Part 1 - Consolidation of the Nurses' Act with the Public Employees' Act

I. A COMPARISON OF THE COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES ACT AND THE COLLECTIVE BARGAINING FOR NURSES ACT

To ensure an unbiased comparison of these two statutes, sections of the CBNA were set opposite the corresponding sections of the CBPEA. Applicable administrative rules were sometimes used in conjunction with the CBNA. Subsequently, representatives from the State's labor relations bureau and from several nurses' labor organizations were asked to comment on the comparisons. By the time this report was finalized, the only nurses' organization to have replied to the comparisons was the Montana Nurses' Association, representing registered nurses only. AFSCME and the State LPN Association, representatives for LPNs, had not yet responded, though in interviews with the author, these representatives indicated strong opposition to combining the CBNA with the CBPEA for reasons similar to those of the MNA.

The sectional comparisons of the two laws and the corresponding comments are presented in full in Appendix A. Comments are summarized below in Section II. Appendix B contains the CBNA's Administrative Rules.

II. SUMMARY OF COMMENTS

The labor relations bureau has several general concerns involving the existence and operation of dual collective bargaining laws. There are also concerns about specific provisions, or the absence of them, within the CBNA. The bureau believes these problems can be resolved through a consolidation of the CBNA with the CBPEA.

A. General Concerns

Much of the labor relations bureau's concern appears to revolve around the use of administrative rules in conjunction with the CBNA. The bureau's feeling is that, in some cases,

the CBNA's rules go beyond the intended purpose of administrative rules and actually expand the CBNA. The bureau sees this as an undesirable practice, not only because it exceeds the present scope of administrative rules, but also because administrative rules do not carry the same authority as statutes.

Another of the bureau's concerns involves the use of administrative rules to minimize the differences between the CBNA and the CBPEA. While approving reduction of differences, the bureau feels this should be accomplished through a change in statute - consolidation of the CBNA and the CBPEA in such a way as to preserve some desirable special provisions accorded nurses. The bureau believes this move makes more sense than using administrative rules to fill in the gaps and repair the language of the current CBNA to conform with the CBPEA. It is also believed that consolidating the two acts will greatly reduce the potential for statute vs. administrative rule confrontations.

The MNA does not share the labor relations bureau's concerns with regard to the use of administrative rules. Admitting that the BPA has, in fact, used administrative rules to make the CBPEA and CBNA more similar, the MNA goes on to suggest that using rules allows for more flexibility in managing the law. The MNA further cites the virtual absence of problems arising from the use of administrative rules as another reason for not being concerned.

B. Specific Concerns

The labor relations bureau also appears to be concerned with the dual-coverage of LPNs by both the CBNA and CBPEA. This uneasiness may be justified in light of the disagreement between even nurses as to which act LPNs would choose to be covered by if given the choice. The bureau views this as another problem that could be rectified by consolidating the two acts.

As noted in the comments, the MNA assumes that LPNs will be covered by the CBNA if and when a confrontation of coverage arises. The MNA maintains that if LPNs agree with this assumption, there should be no concern over which act will cover them.

Another area of the CBNA in which the labor relations bureau sees problems is the involvement of supervisory, management, and confidential employees in bargaining units. The bureau contends that allowing these employees to either join existing bargaining units or organize their own units is undesirable not only because its ramifications could run contrary to management's interest, but also because such a practice would contradict the National Labor Relation Board's policy of non-proliferation of bargaining units in health care facilities.

This right of supervisory, management, and confidential employees to belong to bargaining units under the CBNA appears to be one nurses' provision that would not be welcome if the CBNA is consolidated with the CBPEA. The bureau points to the CBPEA's explicit definitions of and restrictions on supervisory, management, and confidential personnel, which nurses would be expected to conform to if the two acts are combined.

The MNA points out that few, if any, problems have occurred with the mixing of professional and non-professional employee bargaining units which are currently permitted by the NLRA. Moreover, while the MNA agrees that representation of supervisory nurses might, in some cases, be contrary to an employer's interests, it maintains that such representation is necessary since the unit's members, still considered employees, must be aware of their own working conditions, etc.

Still another concern of the labor relations bureau is the CBNA's coverage of private as well as public sector nurses. The bureau stressed that because the CBPEA was constructed for coverage of public employees only, private sector nurses should not receive coverage by the expanded CBPEA resulting from a consolidation of the CBNA with the CBPEA. On the other hand, the bureau has no desire to deprive private sector nurses of coverage.

While the MNA does not appear to have responded to this issue, representatives have expressed a desire to continue to cover private sector nurses in the event some may be eligible for coverage in the future.

It should be noted that neither the MNPA nor the BPA has record of any private sector nurses' bargaining units covered by the CBNA -- that is, whose employer's revenues are less than \$250,000 annually. In short, all existing private nurses' bargaining units appear to be covered by the National Labor Management Relations Act. Thus, while combining the CBNA with the CBPEA would not affect any existing nurses' bargaining units, it would eliminate the opportunity of private sector nurses not covered by the NLMRA to organize in the future if their employers are unwilling to allow their nurses to organize.

III. OPTIONS

With regard to whether or not the Collective Bargaining for Nurses Act should be incorporated with the Collective Bargaining for Public Employees Act, the following options are presented for the Commission's consideration:

Option 1: Maintain the CBNA and the CBPEA as separate acts and make no changes in either.

The major support for this option comes from the fact that there have never been any real problems between

the two statutes since their coexistence began in 1973. Support might also come from those legislators who would prefer not to reopen the CBPEA to further discussion. Finally, support might come from those legislators who, seeing how much time and effort would be involved in consolidating the two acts, would prefer to spend their time on more pressing issues.

On the other hand, the negative ramifications of this option are as follows: first, it would at least temporarily halt the State's efforts to cover all organized public employees with a single collective bargaining law; second, it would leave on the books two laws which are identical or very similar in many respects; third, it would leave in effect dual coverage of LPNs in such major areas as strikes and determination of appropriate bargaining units; fourth, it could be misinterpreted as an indication that administrative rules are suitable replacements for statute; and fifth, it could be misconstrued as an indication that separate laws for specialized groups of employees are acceptable.

Option 2: Allow the CBNA to remain separate, but adopt some or all of the following changes to bring the CBNA more in line with the CBPEA. (If all or most of the changes are adopted, Option 3 might be more appropriate):

Part A - Amend the CBNA to change to statute any or all of the following items covered by administrative rules in the CBNA but by statute in the CBPEA:

1. obligation of labor organizations to safeguard employee rights;
2. eligible voters, ballots, and majority rule;
3. provision for intervening unions;
4. methods of impasse resolution; and
5. ULP procedure and remedy.

Part B - Amend the CBNA to make it more consistent with the CBPEA by making any or all of the following changes:

6. exclude coverage of private sector nurses;

7. exclude participation of supervisory, management, and/or confidential employees in bargaining units;
8. clarify employees' right to organize;
9. include employers' right to petition for a unit determination;
10. establish limits and/or freedoms (or lack thereof) on the BPA's right to investigate representation questions;
11. list negotiable items;
12. provide for dues deduction;
13. provide for employees' right of non-association on religious grounds;
14. include an obligation of labor organizations to represent employees without discrimination;
15. provide for a run-off election in a representation election;
16. provide for (a) representation of the public employer, (b) management rights, and (c) submission of negotiated agreements to the legislature (all necessary only if coverage of private nurses is discontinued);
17. allow final and binding arbitration to be the final step in any negotiated grievance procedure;
18. set a time limit in which labor organizations must file their ULP complaints;
19. establish additional definitions, such as "employee (or "labor") organization," "designated (or "exclusive") representative," "board," "improper employment (or "unfair labor") practice," etc.

Part C - Amend the CBPEA (Section 39-31-103(2)(b)(ix), MCA) to delete coverage of LPNs.

Option 3: Incorporate the CBNA with the CBPEA. This option would bring the State a step closer to its goal of covering all organized public employees with a single collective bargaining act. In a sense, it would also simplify

the law by disposing of one of two similar collective bargaining laws, while, at the same time, establishing the principle of no specialized laws for specialized groups of employees. In addition, this option would eliminate the dual-coverage of LPNs.

To implement this option, however, would require a thorough review of how best to include nurses in the CBPEA. It would require a determination of whether to retain special provisions of the CBNA originally enacted because of the special critical nature of the health care profession, particularly 39-32-110, MCA, which limits the right to strike. Reopening the CBPEA might also be viewed by some as an invitation to change "objectionable" parts of the act, with a long, involved legislative battle being the result.

Part 2 - Consolidation of the Firefighters and Public Employee Acts

IV. A COMPARISON OF THE COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES ACT (CBPEA) TO THE ARBITRATION FOR FIREFIGHTERS ACT (AFA).

The sole purpose of the AFA is to provide interest arbitration procedures for exclusive use by firefighters and their public employers. The distinguishing feature of interest arbitration under the AFA is that it is mandatory once either party petitions for it (39-34-101(2), MCA). Under the CBPEA, both parties must agree to submit their issue(s) to arbitration before it can be initiated (39-31-310, MCA).

Managers generally regard interest arbitration as undesirable because it detracts from the ability of elected officials to make financial and budgetary decisions. Consequently, managers, particularly local government managers, oppose the AFA and are dedicated to assuring that the arbitration procedure now employed by firefighters does not spread to other public employees.

Firefighters, on the other hand, recognizing that public employee strikes are often not well-accepted, view mandatory interest arbitration as an alternate, yet equally effective method of settling collective bargaining impasse situations. Firefighter representatives have disclosed that management's aversion to interest arbitration helps resolve disputes before they are allowed to go to arbitration. The AFA further promotes resolution by requiring that mediation and fact-finding be exhausted before arbitration may be initiated. No similar provision is found in the CBPEA.

V. COMPARING MANAGEMENT AND LABOR VIEWS ON WHETHER TO CONSOLIDATE THE TWO ACTS.

Representatives of firefighters' unions in Billings and Missoula have indicated they would not oppose a consolidation of the two acts if and only if the consolidation involved merely attaching the AFA to the CBPEA. These same representatives, however, emphasized they would strongly oppose the consolidation if they felt it would somehow help to later repeal or in any way diminish the provisions of the present AFA.

Management representatives from Billings, Bozeman, Butte, and Helena have generally agreed to the idea of combining the two acts, but again, only if the consolidation involves nothing more than attaching the AFA to the CBPEA. It should be noted, however, that every representative contacted, in these cities as well as in Missoula, strongly questioned the purpose of consolidating the two acts. The representatives from Billings and Missoula, in particular, emphasized that leaving the acts separate would most likely facilitate their future efforts to repeal those provisions in the firefighters' act which management considers undesirable.

All cities' representatives made it clear that they would fight any consolidation of these acts which would extend the firefighters' mandatory interest arbitration to other public employees. Testimony from previous Commission meetings has made it obvious that local government management strongly opposes interest arbitration for all public employees, including firefighters.

VI. OPTIONS

The following options are presented for the Commission's consideration:

Option 1: Leave the Arbitration for Firefighters Act separate from the Collective Bargaining for Public Employees Act.

This option would maintain the present situation, which is accepted by both labor and, for the most part, management. Many of the parties contacted questioned why such a consolidation is even being considered. They generally agree that, because the AFA involves only one issue and one distinct group of employees, there appears to be little room for unintended misinterpretation and misapplication of either the AFA or the CBPEA.

Option 2: Attach the Arbitration for Firefighters Act to the Collective Bargaining for Public Employees Act in such a way as to neither (1) extend the firefighters' arbitration procedure to other public employees, nor (2) permit any repeal or modification of the AFA.

This option would move the State a step closer to one of the primary goals of the CBPEA, which is to cover all organized public employees with a single act. (The only other group currently outside the CBPEA is the nurses, and efforts are being made to incorporate them as well.)

This option would also make clear the fact that firefighters are covered by the CBPEA in all areas except interest arbitration. There currently exists no language to this effect in either the AFA or the CBPEA as they now stand.

APPENDIX A

COMPARISONS AND COMMENTS: CBPEA vs. CBNA

GENERAL COMMENTS

BUREAU COMMENTS

- (1) The Collective Bargaining for Nurses Act (CBNA) extends coverage to both public and private sector nurses, except when the private health care facility meets the criteria outlined in the Federal Labor-Management Relations Act. The result is that very few, if any, private nurses are covered by Montana's CBNA.
- (2) In 1980, the Board of Personnel Appeals (BPA) published the Rules of Administration of the CBNA. Until that time, the Department of Labor and Industry administered the CBNA. It is the Labor Relations Bureau's opinion that in many instances the CBNA is vague or incomplete. As a result, the Administrative Rules are used to fill in those voids. It appears that the Administrative Rules have also been used to minimize the differences between the CBNA and the Collective Bargaining for Public Employees Act (CBPEA).
- (3) The CBPEA is often interpreted according to National Labor Relations Board (NLRB) decisions. The practice evolved from a decision by Montana's Supreme Court (Department of Highways v. Public Employees Craft Council), which stated that NLRB decisions may be used to interpret the CBPEA when the language in the federal and state laws is similar or identical. This decision precludes NLRB decisions from being used to interpret the CBNA, because the CBNA is very dissimilar to the federal law. Consequently, interpretation of the CBNA rests on the often unpublished decisions of the BPA and other legal or quasi-legal bodies.

MNA COMMENTS

The MNA is strongly in favor of retaining the CBNA because it provides certain items they feel are of great importance to nurses, enumerated below. In addition, the language of the CBNA has served nurses well. Nurses do not fit the mold of an employee in a traditional, production-oriented industry; instead, the CBNA was designed to fit the mold of a service professional in a non-profit organization.

The CBNA preceded the CBPEA by six years and the amendments to the National Labor Relations Act (NLRA) by seven years, both of which permitted coverage to previously exempted public employees and employees of not-for-profit health care institutions. As a result, the CBNA's language was not modeled after either the NLRA or the CBPEA.

Nor is the language of the CBNA in conflict with either the NLRA or the CBPEA. These three labor laws all deal with employees' rights to organize and negotiate their conditions of employment. Nothing in the CBNA prohibits NLRA decisions from being used to enforce the CBNA.

POLICY

CBPEA:

39-31-101. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

History: En. Sec. 1, Ch. 441, L. 1973; R.C.M. 1947, 59-1601.

CBNA:

39-32-101. Purpose of chapter. The purpose of this chapter is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: En. Sec. 1, Ch. 320, L. 1969; R.C.M. 1947, 41-2201.

BUREAU COMMENTS

None.

MNA COMMENTS

None.

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LEGISLATIVE AUTHORITY

CBPEA:

39-31-102. Chapter not a limit on legislative authority. This chapter does not limit the authority of the legislature, any political subdivision, or the governing body relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(5).

CBNA: No corresponding section(s).

BUREAU COMMENTS

No corresponding section exists in the CBNA because the Act covers private as well as public health care facilities. However, most of the bargaining units covered by the CBNA consist of public sector employed nurses only.

MNA COMMENTS

None.

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DEFINITIONS

CBPEA:

39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees.

CBPEA: 39-31-103 (cont.)

- (2) (a) "Public employee" means:
- (i) except as provided in subsection (2)(b) of this section, a person employed by a public employer in any capacity; and
 - (ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.
- (b) "Public employee" does not mean:
- (i) an elected official;
 - (ii) a person directly appointed by the governor;
 - (iii) a supervisory employee, as defined in subsection (3) of this section;
 - (iv) a management official, as defined in subsection (4) of this section;
 - (v) a confidential employee, as defined in subsection (12) of this section;
 - (vi) a member of any state board or commission who serves the state intermittently;
 - (vii) a school district clerk;
 - (viii) a school administrator;
 - (ix) a registered professional nurse performing service for a health care facility;
 - (x) a professional engineer; or
 - (xi) an engineer-in-training.
- (3) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.
- (4) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.
- (5) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.
- (6) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.
- (7) "Board" means the board of personnel appeals provided for in 2-15-1705.
- (8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.
- (9) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.
- (10) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.
- (11) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.
- (12) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.
- History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602part; amd. Sec. 1, Ch. 271, L. 1979; amd. Sec. 31, Ch. 197, L. 1979.

CBPEA:

39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(3) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees as defined in this chapter, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals or both.

(4) "Strike" shall mean any work stoppage caused by the employees of a health care facility, as defined in subsection (3) of this section, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: En. Sec. 2, Ch. 320, L. 1969; R.C.M. 1947, 41-2202(1) thru (3), (5).

39-32-106

(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

History: En. Sec. 4, Ch. 320, L. 1969; R.C.M. 1947, 41-2204.

Also see ARM 24.25.301 through 303.

BUREAU COMMENTS

- (1) CBPEA clearly defines "public employees" as persons employed by public employers.
- (2) In the CBNA, professional employees (supervisory, management, and confidential) cannot be included in a unit with non-professional employees unless a majority of the professional employees so desire. The CBPEA has no such protection.
- (3) CBPEA explicitly defines supervisory, management and confidential personnel as not being public employees, thus excluding them from joining bargaining units. CBNA fails to distinguish supervisory, management and confidential personnel, and so leaves the door open for them to join bargaining units. Could be contrary to employers' interests.
- (4) Allowing supervisory, management and confidential personnel to organize their own bargaining unit(s) is also not desirable because it could be contrary to the employers' interests. Also, proliferation of bargaining units in health care facilities goes against NLRB policy (see St. Vincent's Hospital v. NLRB, CA 3, 1977, 97 LRRM 2119 and Mercy Hospitals of Sacramento, 1975, 89 LRRM 1097).
- (5) CBPEA excludes RN's from definition of "public employee", but does not exclude LPN's. CBNA covers both RN's and LPN's. Thus, LPN's are covered by both laws, which creates potential for confusion and conflicting applications of law. Could be damaging to employees and employers.

- (6) CBPEA explicitly defines several terms which appear repeatedly throughout the Act, thus avoiding possible confusion and misapplication. Perhaps these definitions are not needed in the CBNA or are well recognized and accepted, but their inclusion in the CBNA would leave less room for misinterpretation.

MNA COMMENTS

- (1) None.
- (2) The mixing of professional and non-professional units is now a part of NLRA, with no apparent problems. Currently, there are no such mixed units represented by the MNA under the CBNA.
- (3) All registered nurses have a responsibility in the area of confidentiality. Registered nurses are not in administrative assistant or confidential positions, so the state's argument is inappropriate.

The CBNA does allow for supervisory nurses to be represented and the MNA understands that this practice could occasionally be contrary to the employer's interest. The MNA believes, however, that a supervisory unit is appropriate because its members are in a non-employer stance with regard to employment conditions, etc., even though they may act on behalf of the employer in relation to other non-supervisory employees.

- (4) None.
- (5) With respect to coverage for LPN's, the MNA maintains that LPN's are covered by the CBNA, unless they indicate otherwise.
- (6) The CBNA adequately defines those terms the MNA believes need defining, which are "appropriate unit", "strike", "health care facility", and "employee."

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RULE ADOPTION

CBPEA:

39-31-104. Rulea. The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this chapter.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-161X41.

CBNA:

39-32-103. Rules. The department of labor and industry may adopt and promulgate rules as to times and places for hearing and notice thereof so as to provide adequate notice and opportunity to be heard to all interested parties, as to elections, and so as to carry into effect the provisions of this chapter.

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(3).

BUREAU COMMENTS

The CBPEA requires the BPA to adopt administrative rules, while the CBNA, much more permissive, only allows or permits the Department of Labor and Industry to adopt such rules. In addition, the language in the CBNA may be interpreted as limiting the kinds of rules which can be issued to a greater extent than the language in the CBPEA.

MNA COMMENTS

(Includes a response to 39-31-105.)

The state did not have any machinery in place when the CBNA was adopted. Subsequently, the CBPEA created a different sort of machinery. The CBNA language allowing for the adoption of rules permits adaptation to whatever machinery is in effect. To date, there have been no problems with adopting rules to fit the machinery of state government to labor. However, the MNA would not oppose modifying the CBNA, if necessary, in order to utilize the current state machinery.

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ADMINISTRATIVE PROCEDURES
CBPEA:

39-31-105. Administrative procedure act applicable. All hearings and appeals shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.

History: En. Sec. 17, Ch. 441, L. 1973; R.C.M. 1947, 59-1616.

39-31-106. Board authorized to subpoena witnesses and administer oaths. (1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(1), (2).

39-31-107. Service of subpoenas, notices of hearing, and other process. Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter shall be served as provided by the rules of civil procedure.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-161X(3).

39-31-108. Counsel for public parties to litigation. In any action brought under the provisions of this chapter in the courts of this state, the public employer shall be represented by the attorney general or attorney of subdivision and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

History: En. Sec. 11, Ch. 441, L. 1973; R.C.M. 1947, 59-1611.

CBNA: No corresponding section(s), but see ARM 24.25.101 et. seq

BUREAU COMMENTS

These four sections of CBPEA are covered not in the CBNA, but in the CBNA's Administrative Rules. The desirability of this arrangement is questionable in light of the fact that law takes precedence over administrative rule.

MNA COMMENTS

(See previous response.)

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PROTECTION OF EMPLOYEE'S RIGHT TO ORGANIZE

CBPEA:

39-31-201. Public employees protected in right of self-organization. Public employees shall have and shall be protected in the exercise of the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-160X(1).

CBNA: No corresponding section(s).

BUREAU COMMENTS

Through this section, the CBPEA protects employees in their union activity. Such employee protection is not as clearly defined under the CBNA.

MNA COMMENTS

Protection of registered and practical nurses in the exercise of union activity is defined by the nature of the law itself. (See 39-32-109, MCA.)

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UNIT DETERMINATION

CBPEA:

39-31-202. Board to determine appropriate bargaining unit — factors to be considered. In order to assure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(2).

CBNA:

39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

39-32-104. Hearings for determination of appropriate unit. The department of labor and industry may set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under 39-32-106(2) or 39-32-108(1).

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(1).

39-32-106. Determination of appropriate bargaining unit. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility or representatives of employees may apply to the department of labor and industry and said department, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

See also ARM 24.25.301 et. seq

BUREAU COMMENTS

The CBPEA lists a number of factors to be considered in the determination of an appropriate bargaining unit. Most, if not all, of these terms are defined by referencing specific cases of and decisions by the NLRB. These same factors (and a few more) are listed by the Administrative Rules to the CBNA, but not by the CBNA itself. Thus, the issue of law taking precedence over ARM again arises.

MNA COMMENTS

The CBNA clearly defines "appropriate unit." In addition, rules are permissible under the CBNA. Administrative rules allow for more flexibility in managing the law.

=====

DUES DEDUCTION

CBPEA:

39-31-203. Deduction of dues from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

History: En. Sec. 12, Ch. 441, L. 1973; R.C.M. 4917, 59-1612.

CBNA: No corresponding section(s).

BUREAU COMMENTS

It is improbable that the absence of this section from the CBNA causes hardship on either the employer or the employee. However, dues deduction is an item which is granted by statute under the CBPEA and must be negotiated under the CBNA.

MNA COMMENTS

(Response also covers 39-31-204.)

The MNA negotiates dues deduction and the right of non-association into all of its collective bargaining agreements and sees no problem. In addition, the MNA recognizes the right of individuals with regard to religion and its influence on membership in a labor organization.

=====

RIGHT OF NON-ASSOCIATION ON RELIGIOUS GROUNDSCBPEA:

39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right. (1) No public employee who is a member of a bona fide religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment if such public employee pays in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments, and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this section shall make written application to the chairman of the board of personnel appeals. Within 10 days of the date of receipt of such application, the chairman shall appoint a committee of three, consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who shall be the chairman. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within 3 days of the meeting date, and a copy thereof shall be forthwith mailed to such public employee, labor organization, and the chairman of the board of personnel appeals.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(5).

CBNA: No corresponding section(s).

BUREAU COMMENTS

Again, the absence of this section from the CBNA probably causes little, if any, hardship on either party. Like dues deduction, the right of non-association can be negotiated directly into the contract. However, if these items are not negotiated as part of a contract, then the question of whether the affected employees have these rights becomes an issue that is resolvable only through the courts.

MNA COMMENTS

(See previous response.)

=====

REPRESENTATION WITHOUT DISCRIMINATION

CBPEA:

39-31-205. Designated labor organizations to represent employees without discrimination. Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(3).

CBNA: No corresponding section(s).

BUREAU COMMENTS

In contrast to the CBPEA, the CBNA makes no effort to protect employees from discrimination by labor organizations based on rate of pay, hours, fringe benefits, etc.

MNA COMMENTS

Because this issue is covered by federal law, the MNA feels no need to address it in the CBNA.

OBLIGATION OF LABOR ORGANIZATION TO SAFEGUARD EMPLOYEE RIGHTS

CBPEA:

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification. Certification as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

- (1) provisions are made for democratic organization and procedures;
- (2) elections are conducted pursuant to adequate standards and safeguards;
- (3) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and
- (4) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(4).

CBNA: No corresponding section(s), but see ARM 24.25.203.

BUREAU COMMENTS

The employee protection provided by this section of the CBPEA can be found in the CBNA's Administrative Rules. Again, though, these rules are not law.

MNA COMMENTS

This issue is included in the Administrative Rules, so again there is no need to address it in the CBNA.

=====

ADJUDICATION OF REPRESENTATION DISPUTES

CBPEA:

39-31-207. Petition on representation question — investigation by board — hearing. (1) The board or an agent of the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that 30% of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative; or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) In this hearing, the board is not bound by common law and statutory rules of evidence.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

CBNA:

39-32-107. Evidence required to show status as designated representative. An employee organization is considered to be the duly designated representative of all the employees in an appropriate unit for the purpose of 39-32-109 if it can show evidence that bargaining rights have been assigned to it by a majority of the employees in that unit.

History: En. Sec. 5, Ch. 320, L. 1969; R.C.M. 1947, 41-2205.

39-32-108. Determination of status as designated representative. (1) If the right of an employee organization to represent the employees in an appropriate unit is questioned by the authority in charge of the facility employing the employees, the employee organization may petition the department of labor and industry for a determination. The department or its representative shall investigate and determine the composition of an appropriate unit, if such determination has not previously been made under 39-32-106, and shall determine the representative, if any, designated to represent the employees in the appropriate unit.

(2) An employee organization found by the department to be authorized by at least 30% of the employees in an appropriate unit may apply for an election by secret ballot to determine its right to represent the employees in that unit. If more than one employee organization claims to represent employees in that unit, the department may conduct an election by secret ballot to determine which is authorized to represent the unit. If any employee organization receives a majority of the valid votes cast at the election, it is considered to be authorized to represent all the employees in that unit for the purpose of 39-32-109.

See also ARM 24.25.304.

BUREAU COMMENTS

- (1) When a question of representation exists, the CBPEA allows either the employee organization or the employer to petition for a determination. The CBNA, however, permits only the employee organization to petition for a determination, even if the employer is the one questioning the representation. Obviously, detrimental to the employer.
- (2) The CBPEA explicitly frees the BPA from having to observe common law and statutory rules of evidence in the investigation to determine representation. The CBNA allows the BPA to investigate but does not define any restrictions, or lack thereof.
- (3) The CBPEA requires the BPA ". . . to direct an election by secret ballot to determine. . ." the question of representation, while the CBNA only permits the Department to direct such an election. However, the CBNA's Administrative Rules require the Board to direct an election (see ARM 24.25.601), and this situation introduces two points of contention:

(i) There are several instances in which the CBNA's rules fill voids, or expand, the law itself. The CBPEA directly references intervening unions in 39-31-208, MCA. The CBNA makes no reference to them, but an attempt to resolve this omission is made by covering intervening unions in the CBNA's Administrative Rules. Another example of how the rules are being used to fill voids in, or expand, the CBNA is with regard to impasse resolution procedures. The CBNA makes no mention whatsoever of what procedures to follow in the case of a collective bargaining impasse. But, ARM 24.25.801 through 804 cover the area thoroughly. Again, the rules are used to expand the CBNA.

(ii) In promulgating the CBNA's Administrative Rules, it appears that the Board is trying not only to fill voids within the CBNA, but also to align the CBNA with the CBPEA as much as possible. One example of this is seen in comparing ARM 24.25.601, et seq., with ARM 24.26.655, et seq. --The two subchapters are nearly identical. Two other examples are those described briefly in part (i) of this discussion. If, in fact, the BPA is attempting to make the two Acts as much alike as possible, then the question arises: Why should the CBNA not be incorporated with the CBPEA to avoid creating two extremely similar laws?

MNA COMMENTS

- (1) and (2) The CBNA clearly defines "appropriate unit", and any changes in the unit may be negotiated. Thus, there is no need for unit clarifications.
- (3) (Includes response to 39-31-203(4).) These issues are provided for in the Administrative Rules. These rules are procedural; if the state wishes to include them as law, the MNA would be agreeable.

The MNA agrees that the CBNA and the CBPEA are quite different in many respects, and that the BPA had adopted rules to make the laws more similar. However, it is important to note that the flexibility of the CBNA is what has allowed the BPA to promulgate these rules, and this is one more reason for the MNA's wanting to retain the CBNA.

INTERVENING UNIONS

CBPEA: (39-31-208)

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

CBNA: No corresponding section(s), but see ARM 24.25.207.

BUREAU COMMENTS

None.

MNA COMMENTS

None.

=====

ADMINISTRATION OF ELECTIONS

CBPEA: (39-31-208)

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

CBNA: No corresponding section(s), but see ARM 24.25.604.

BUREAU COMMENTS

None.

MNA COMMENTS

None.

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RUNOFF ELECTION

CBPEA: (39-31-208)

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part); amd. Sec. 32, Ch. 397, L. 1979.

CBNA: No corresponding section(s), but see ARM 24.25.606.

BUREAU COMMENTS

The CBPEA provides for a run-off election between the top two choices in a representation election. Neither the CBNA nor the ARM makes such a provision. It is noted, however, that the ARM does allow for a "no representation" choice in the representation election for nurses.

MNA COMMENTS

(See previous comments.)

=====

CONSENT ELECTION

CBPEA: (39-31-209)

39-31-209. Consent election. Nothing in 39-31-207 or 39-31-208 prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

CBNA: No corresponding section(s).

BUREAU COMMENTS

None.

MNA COMMENTS

None.

=====

PROHIBITION OF ANOTHER ELECTION FOR TWELVE MONTHS

CBPEA:

39-31-210. Election in twelve-month period following valid election prohibited. An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding 12-month period a valid election has been held.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

CBNA: (39-32-108)

(3) A determination under this section remains in effect for at least 1 year and until either the health care facility or an employee organization shall apply for a redetermination.

History: En. Sec. 6, Ch. 320, L. 1969; R.C.M. 1947, 41-2206.

BUREAU COMMENTS

None.

MNA COMMENTS

None.

=====

AFFILIATION PROHIBITIONCBPEA: (39-31-211)

39-31-211. Labor organizations representing employees of the board to be unaffiliated. A labor organization representing employees of the board may not affiliate or associate itself with a labor organization that represents any employees other than employees of the board. The board may not certify a labor organization as the exclusive representative of the employees of the board if, at the time of certification or thereafter, the labor organization is associated or affiliated with a labor organization that represents employees other than employees of the board.

History: En Sec. 2, Ch. 271, L. 1979.

Compiler's Comments

Codification Sec. 3, Ch. 271, L. 1979, provided: "It is intended that section 2 be codified

as an integral part of Title 39, chapter 31, part 2; and the provisions of Title 39, chapter 31, apply to section 2."

CBNA: Not applicable, so no corresponding section(s).

BUREAU COMMENTS

This section of the CBPEA, along with several other sections, is not applicable to nurses, but they serve as good examples of how easily exceptions in the CBPEA can be made for particular groups of employees. Similar exceptions could be made for unique sections of the CBNA.

MNA COMMENTS

The MNA does not believe the Labor Relations Bureau's comments are applicable to health care systems. The CBNA adequately covers the uniqueness of health care.

=====

REPRESENTATION OF PUBLIC EMPLOYERCBPEA:

39-31-301. Representative of public employer. The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether elected or appointed, or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

History: En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974; amd. Sec. 1, Ch. 35, L. 1975; R.C.M. 1947, 59-1609.

CBNA: No corresponding section(s).

BUREAU COMMENTS

The CBPEA establishes the negotiator's authority in government agencies. The CBNA, however, does not address this issue, possibly because the CBNA pertains to private as well as public sector employers.

MNA COMMENTS

None.

=====

PARTICIPATION BY STUDENT REPRESENTATIVE

CBPEA:

39-31-302. Participation by student representative when public employer is board of regents. When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(pari).

CBNA: No corresponding section(s).

BUREAU COMMENTS

Here, the CBPEA refers to an issue unique to the University System, which may not be applicable to nurses.

MNA COMMENTS

None.

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MANAGEMENT RIGHTSCBPEA:

39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

- (1) direct employees;
- (2) hire, promote, transfer, assign, and retain employees;
- (3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and non-productive;
- (4) maintain the efficiency of government operations;
- (5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
- (6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;
- (7) establish the methods and processes by which work is performed.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-16032).

CBNA: No corresponding section(s).

BUREAU COMMENTS

This section is unique to the CBPEA. However, private sector operations bargain over each item listed in this section and often rely on a reserved rights doctrine to cover those items not covered by the contract. The fact that the CBNA was designed to cover some private sector employees might explain why this section is omitted from the CBNA.

MNA COMMENTS

None.

=====

NEGOTIABLE ITEMS FOR SCHOOL DISTRICTS

CBPEA:

39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

History: En. Sec. 2, Ch. 117, L. 1975; R.C.M. 1947, 59-1617.

CBNA: No corresponding section(s).

BUREAU COMMENTS

This is yet another section that does not apply to the nurses.

MNA COMMENTS

None.

=====

DUTY TO BARGAIN COLLECTIVELY

CBPEA:

39-31-305. Duty to bargain collectively — good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) of this section.

CBNA: No corresponding section(s), but see 39-32-109(4), MCA.

BUREAU COMMENTS

Under the CBNA, only the employer may be charged with failing to bargain in good faith. The CBPEA provides more balance, though, by making it possible for either the employer or the labor organization to be so charged.

Author's Comment: It should be noted that MNA, representing most of the state's RN's, has agreed to "modifications of the State CBNA which would provide for. . .employee. . .ULP's."

MNA COMMENTS

None.

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DUTY TO BARGAIN COLLECTIVELY (CONT.)CBPEA:

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or his designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

CBNA: No corresponding section(s), but see 39-32-101 and 39-32-109(4), MCA.

BUREAU COMMENTS

The CBPEA is much more precise in its explanation of collective bargaining. "Wages, hours, fringe benefits, and other conditions of employment" are specified as negotiable items. On the other hand, the CBNA lists no mandatory items of negotiation, though it does indicate that the purpose of its collective bargaining efforts is to "establish and maintain. . .desirable employment practices." Common practice and understanding may dictate exactly what can and cannot be bargained, but specific language similar to that found in the CBPEA may help avoid any future misinterpretations and/or misapplications.

MNA COMMENTS

The MNA maintains that any area of conflict between labor and management can and should be discussed and/or negotiated. There have been no problems with this issue in the past, nor should there be in the future.

=====

DUTY TO BARGAIN COLLECTIVELY (CONT.)

CBPEA: (39-31-305)

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

History: (1)En. Sec. 4, Ch. 441, L. 1973; Sec. 59-1604, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; Sec. 59-1605, R.C.M. 1947; R.C.M. 1947, 59-1604, 59-1605(3), (4).

CBNA: No corresponding section(s).

BUREAU COMMENTS

This section obviously refers to public sector agreements only. Because the CBNA covers public and private sector agreements, it lacks the reference to legislative authority possessed by the CBPEA.

MNA COMMENTS

None.

=====

COLLECTIVE BARGAINING AGREEMENTS

CBPEA:

39-31-306. **Collective bargaining agreements.** (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or his representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

History: En. Sec. 10, Ch. 441, L. 1973; amd. Sec. 4, Ch. 313, L. 1974; R.C.M. 1947, 59-1610.

CBNA: No corresponding section(s), but see 39-32-109(4).

BUREAU COMMENTS

While the CBNA has no similar section, certain points must be addressed:

(1) Subsection 1 of the CBPEA again highlights the absence of labor organization ULP's in the CBNA. Under the CBPEA, a ULP is committed if either party refuses to reduce an agreement to writing or sign it. Under the CBNA, only the employer may be charged with a ULP for refusing to reduce an agreement to writing or sign it; (2) With regard to Subsection 2, the only fact requiring attention is that most, if not all, state contracts with nurses provide for binding arbitration as the final step in a grievance procedure, even though the CBNA has no corresponding section. This situation highlights the nurses' practice of following the CBPEA whenever the CBNA fails to address (or adequately address) a particular issue; (3) Subsections 3 and 4 refer only to the public sector and are, therefore, not appropriately included in the CBNA, which covers both the public and private sectors.

MNA COMMENTS

The ULP issue has already been satisfactorily addressed. The issue of binding arbitration, however, is an item negotiated into every contract the MNA is party to, and so, is not necessary in the law.

=====

IMPASSE RESOLUTION

CBPEA:

39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

39-31-308. Initiation of factfinding — designation of fact finder. (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate factfinding.

(2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining person shall be designated fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.

(3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(2) thru (4).

39-31-309. Factfinding proceedings. (1) The factfinder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the factfinder, the board shall issue subpoenas for hearings conducted by the factfinder. The factfinder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the factfinder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The factfinder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) The cost of factfinding proceedings must be equally borne by the board and the parties concerned.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the factfinder from endeavoring to mediate the dispute in which he has been selected or appointed as factfinder.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(5) thru (8); amd. Sec. 33, Ch. 397, L. 1979.

39-31-310. Submission of issues to arbitration. Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).

39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under this chapter until he has successfully completed the course or equivalent education.

History: En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1.

CBNA: No corresponding section(s), but see ARM 24.25.802, 803, and 804.

BUREAU COMMENTS

The problem here is not whether collective bargaining impasse resolution procedures are covered, but how they are covered. The CBPEA addresses these procedures in law, whereas they are covered just by Administrative Rules under the CBNA. This could be important in light of the fact that, as stated earlier, law takes precedence over administrative rules.

MNA COMMENTS

These issues are covered satisfactorily by the CBNA's Administrative Rules.

=====

ULPs OF PUBLIC EMPLOYER

CBPEA:

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

- (1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;
- (2) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;
- (3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member, must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-16051g; amd. Sec. 34, Ch. 397, L. 1979.

CBNA:

39-32-109. Improper employment practices. It is an improper employment practice for a health care facility to do one or more of the following:

(1) interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(2) initiate, create, dominate, contribute to, or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(3) discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(4) refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing and have their representative sign any agreement arrived at through negotiations and discussion.

(5) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of such action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

History: En. Sec. 3, Ch. 320, L. 1969; R.C.M. 1947, 41-2203.

BUREAU COMMENTS

Although these two sections cover much of the same material in similar ways, a few differences still exist: (1) Subsection 1 under both Acts are nearly identical; (2) Subsection 2 is similar under both Acts, but the CBPEA permits the employer to confer with employees during working hours without loss of employee time or pay. This provision is not made in the CBNA; (3) Subsection 3 of the CBPEA specifically allows an agency shop provision to be negotiated into collective bargaining agreements. This provision is not mentioned in the CBNA, though, so the question of legality with regard to nurses again arises. Subsection 3 of the CBNA also omits the word "encourage." This may not be a highly significant difference between the two Acts, but the CBPEA, which includes "encourage", appears to cover more contingencies. By including "encourage", the CBPEA attempts to eliminate (i) "employer-oriented" unions, and (ii) employer preference of one union over another. Subsections 4 and 5 of the CBPEA are very similar to Subsections 5 and 4, respectively, of the CBNA.

MNA COMMENTS

None.

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ULPs OF LABOR ORGANIZATIONCBPEA:

39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

- (1) restrain or coerce employees in the exercise of the right guaranteed in 39-31-201 or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;
- (2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;
- (3) use agency shop fees for contributions to political candidates or parties at state or local levels.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2).

CBNA: No corresponding section(s).

BUREAU COMMENTS

The fact that the CBNA does not currently allow for employer ULP complaints is well-noted, and it is our understanding that the nurses will support adoption of labor organization ULP's similar to those in the CBPEA.

MNA COMMENTS

None.

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BOARD TO REMEDY ULPs

CBPEA:

39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board pursuant to this part.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 35, Ch. 397, L. 1979.

CBNA: No corresponding section(s).

BUREAU COMMENTS

This section of the CBPEA establishes the BPA's authority to hear and decide ULP's. Similar authority exists only under the ARM to the CBNA, but not under the CBNA itself.

Author's Comment: It should be noted that MNA supports allowing the BPA to settle both labor organization and employer ULP charges.

MNA COMMENTS

None.

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TIME LIMIT ON ULP COMPLAINT

CBPEA:

39-31-404. Six-month limitation on unfair labor practice complaint — exception. No notice of hearing shall be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

CBNA: No corresponding section(s).

BUREAU COMMENTS

The absence of this section from both the CBNA and the ARM is potentially very damaging to employers, because there is no time limit in which labor organizations must file their ULP complaints.

MNA COMMENTS

Such provisions could be made in the Administrative Rules.

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ADMINISTRATIVE PROCEDURES FOR ULP ADJUDICATION

CBPEA:

39-31-405. Unfair labor practice complaint — notice of hearing — service — answer. (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board or any agent designated by the board for such purposes shall issue and cause to be served upon the person a copy of the complaint and a notice of hearing before the board, a member thereof, or before a designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(2) The person upon whom the charge is served shall file an answer to the complaint.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties or within such further period as the board may authorize, the recommended order shall become the order of the board. The board shall issue a final order within 5 months after a complaint is submitted to the hearing officer.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 369, L. 1979.

39-31-407. Amendment of complaint. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-408. Modification by board of findings and order. Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(3).

CBNA: No corresponding section(s), but see ARM 24.25.701 et. seq

BUREAU COMMENTS

These issues are addressed by Administrative Rules only under the CBNA, rather than by the actual statute. Thus, the question of law versus administrative rule again arises.

MNA COMMENTS

None.

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COURT ENFORCEMENT

CBPEA:

39-31-409. Court enforcement and review of board order. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order and shall file in the district court at its own expense the record in the proceedings.

(2) Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least 20 days before the date set for hearing.

(3) No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances.

(4) The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court.

(6) After the hearing, the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified or setting aside, in whole or in part, the order of the board. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(7) The commencement of proceedings under subsections (1) through (6) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: En. Sec. 8, Ch. 441, L. 1973; R.C.M. 1947, 59-1608.

CBNA:

39-32-111. Proceedings in district court. The department of labor and industry, a health care facility, or an employee organization qualified to apply for an election under 39-32-108 may, in the name of its members or in its name, institute proceedings to restrain the commission of any improper practice listed in 39-32-109 or appeal from any determination by the department. The proceeding may be instituted in the district court for any county in which the health care facility does business. The court in such an action may grant mandatory or prohibitory relief or, on appeal, adjudicate whether the department has acted in abuse of discretion or upon arbitrary or discriminatory rules, in which event the court may reverse or modify such determination.

History: En. Sec. 8, Ch. 320, L. 1969; R.C.M. 1947, 41-2208.

BUREAU COMMENTS

While both Acts allow for court enforcement of BPA and Department of Labor and Industry determinations, only the CBPEA provides a procedural review of how the court shall go about making its final decision. The CBNA, being more general on the proceedings, leaves more room for misinterpretation.

MNA COMMENTS

None.

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STRIKES/GENERAL CLASSIFICATION

CBPEA: No corresponding section(s), but see 39-31-201, MCA.

CBNA:

39-32-110. Unlawful strikes. It shall be unlawful for any employee of a health care facility, as defined in 39-32-102, to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility, as defined in 39-32-102, or their duly elected representative must give the health care facility 30 days' written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969; R.C.M. 1947, 41-2209.

39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification. (1) The department of labor and industry may determine, on its own motion by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units.

(2) When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the department may make such determination on the basis of such general classification.

(3) The health care facility or employee organization may, within 30 days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification, and hearing shall be held on such petition.

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(2).

BUREAU COMMENTS

These sections of the CBNA apply only to health care facility employees, so no corresponding sections exist in the CBPEA. Because the laws in these sections apply only to health care facility employees, however, does not mean they couldn't be incorporated easily into the CBPEA in the same way that exclusive sections for the University System, the Board of Personnel Appeals employees, and the School Boards are part of the CBPEA.

MNA COMMENTS

The MNA prefers not to add to or modify the steps in the strike procedure.

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DEPARTMENT OF LABOR AND INDUSTRY
CHAPTER 25
COLLECTIVE BARGAINING FOR NURSES

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7/1/80

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COLLECTIVE BARGAINING FOR NURSES

	24.25.106
	Sub-Chapter 1
	Procedural Rules

24.25.101 DIVISION ADDRESS (1) All requests, petitions, and other correspondence to the division should be addressed to the Personnel Appeals Division, Capitol Station, Helena, MT 59601. (History: Sec. 2-4-201 MCA; IMP, 2-4-201 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24.25.102 SERVICE OF PROCESS All service and computation of time in proceedings before this division shall be bound by the Montana Rules of Civil Procedure. (History: Sec. 2-4-201 MCA; IMP, 2-4-201 MCA; 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24.25.103 INTERVENTION (1) Any employee, group of employees, employee representative, or employer may be permitted to intervene by serving a motion to intervene upon the parties and the division. The motion shall be accompanied by affidavit(s) establishing a basis for intervention. The division shall determine the validity of the basis for intervention. (History: Sec 2-4-201, MCA; IMP 2-4-201 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24.25.104 AMENDING PETITIONS (1) Any petition may be amended, in whole or in part, by the petitioner or the division, or withdrawn by the petitioner at any time prior to the closing of the first ballot in an election, or prior to the closing of a case, upon such conditions as the division considers proper and just. (History: Sec 2-4-201 MCA; IMP 2-4-201 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24.25.105 CONTESTED CASES. DEFAULT ORDER WHEN PARTY FAILS TO APPEAR AT HEARING (1) When a notice of a hearing has been given, but a party fails to appear at the hearing specified for that hearing, the Personnel Appeals Division shall enter an order setting aside the hearing. The evidence before it supplied by the division's action. If the defaulting party is unable to show good cause for his absence, the hearing will be vacated and a new hearing date set. (History: Sec 2-4-201 MCA; IMP, 2-4-201 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79)

24.25.106 MOTIONS (1) All motions other than those made during a hearing shall be made in writing and submitted to the division. They shall briefly state the relief sought, and shall be accompanied by affidavits setting forth the grounds upon which they are based. The moving party shall serve a copy of all motions on all other parties and shall file with the division the original with proof of service. Answering affidavits, if any, must be served on all parties.

and the original thereof, together with proof of service, shall be filed with the division within five days after service of the moving papers, unless the division directs otherwise. The division may decide to hear oral argument or testimony thereon. If the division postpones for postponements of hearing or conference scheduled by the division will not be granted unless good and sufficient cause is shown and the following requirements are met:

- (a) The request must be in writing directed to the Administrator or hearing examiner.
- (b) The grounds for the request must be set forth in detail.
- (c) The requesting party must specify alternate dates for rescheduling the hearing or conference.
- (d) The position of all parties must be ascertained in advance by the requesting party and set forth in the request.
- (e) Copies of the request must be served contemporaneously on all parties, and that fact must be noted on the request.
- (f) The request must be signed by the person making it.
- (3) Except for good cause shown, no request for postponement will be granted on any of the three days immediately preceding the date of the hearing or conference. (History: Sec. 2-4-201 MCA; IMP, 2-4-201 MCA, NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.107. HEARINGS (1) The division shall conduct its hearings in accordance with the appropriate provisions of the Administrative Procedure Act. (History: Sec. 2-4-201 MCA; IMP 2-4-201 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.108. EXTENSION OR WAIVER OF TIME LIMITS (1) Time limits provided for in these rules may be waived or extended as follows:

- (a) by written agreement between the parties, subject to final approval of the division; or
- (b) by motion to the division, subject to the granting of the motion by the division. (History: Sec. 2-4-201 MCA; IMP, 2-4-201 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.109. SUGGESTION (1) At the discretion of the division, these rules may be waived or suspended at any time in any proceeding unless such action results in depriving a party of substantial rights. (History: Sec. 2-4-201 MCA; IMP, 2-4-201 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

Rules 24.25.110 through 13.14.119 Reserved

24.25.120. SEVERABILITY (1) If any one of these rules is held to be invalid, it shall not invalidate any other rule. (History: Sec. 2-4-201 MCA; IMP, 2-4-201 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

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Sub-Chapter 2

General Provisions

24.25.201. DEFINITIONS (1) The Department of Labor and Industry hereby adopts the definitions set forth in section 39-32-102, MCA.

(2) The word "division" means the personnel appeals division and in the proper context may also mean an agent appointed by the division to perform certain division functions. (History: Sec. 39-32-103 MCA; IMP 39-32-103 MCA, NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.202. FILING OF NEGOTIATED AGREEMENTS. (1) One copy of each collective bargaining contract between a public employer and a labor organization shall be filed with the division within 30 days after the final execution thereof. (History: Sec. 39-32-103 MCA; IMP 39-32-103 MCA, NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.203. FILING OF LABOR ORGANIZATION'S BYLAWS (1) Any employee organization seeking certification from the board as exclusive representative of a group of employees must first file with the division a copy of the labor organization's written bylaws. The bylaws must be filed only once with the division. If any revisions or changes are made, the bylaws must be refiled.

(2) The bylaws must provide for and guarantee that:

- (a) Provisions are made for democratic organization and procedures.
- (b) Elections are held pursuant to adequate standards and safeguards.

(c) Controls are provided for the regulation of officers and agents having fiduciary responsibility.

(d) Sound accounting, fiscal control, and annual audit requirements exist. (History: Sec. 39-32-103 MCA; IMP 39-32-103 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.204. PROOF OF INTEREST CONFIDENTIAL (1) The proof of interest submitted with any petition shall not be furnished to any of the parties. The division shall consider the adequacy of the showing of interest and such decision shall be subject to challenge. (History: Sec. 39-32-103 MCA; IMP 39-32-103 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

Rule 24.25.205 Reserved

24.25.206. NOTICE OF STRIKE (1) Any notice of strike given by the employees of a health care facility or institution, or any representative of such employees, shall be filed with the division simultaneously with the division. (History: Sec. 39-32-103 MCA; IMP, 39-32-110 MCA; NEW, 1979 P. 1492-1493, Eff. 11/30/79.)

Sub-Chapter 3

Unit Determinations

24.25.301 COMPOSITION OF UNIT (1) A unit may consist of all of the employees of the employer or any department, division, bureau, section, or combination thereof if found to be appropriate by the division. (History: Sec. 39-32-103 MCA; IMP, 39-32-106 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.302 APPROPRIATE UNIT (1) In considering whether a bargaining unit is appropriate, the division shall consider such factors as:

- (a) similarity of duties
- (b) licensure
- (c) conditions of employment
- (d) community of interest;
- (e) wages;
- (f) hours;
- (g) fringe benefits and other working conditions;
- (h) the history of collective bargaining;
- (i) common supervision;
- (j) common personnel policies;
- (k) extent of integration of work functions and inter-change among employees affected; and,

(1) desires of the employees.

(History: Sec. 39-32-103 MCA; IMP 39-32-106 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.303 PROFESSIONAL EMPLOYEES (1) When a petition for unit determination proposes a unit which contains both professional and nonprofessional employees and the unit is found to be appropriate to this division, an election will be conducted among professional employees to determine whether or not they wish to be included in the proposed unit.

(a) If a majority of the professional employees do not desire to be included in the proposed unit, they shall be excluded from the unit.

(b) If a majority of the professional employees desire to be included in the unit they shall be included in the unit.

(2) Notice of the special election shall be posted by the employer no less than five days prior to the election. (History: Sec. 39-32-103 MCA; IMP, 39-32-106(3) MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.304 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION (1) A petition for new unit determination and election shall be filed with the division by an employee or a representative of a group of employees.

(2) The original petition shall be signed by the peti-

tioner.

(3) The original petition and five copies of the petition shall be filed with the division.

(4) The petition shall contain:

- (a) a description of the unit to be determined specifically inclusions and exclusions;
- (b) a statement as to whether there is any known disagreement between the employer and the petitioner as to the nature and scope of the proposed unit and the reasons for the disagreement;
- (c) the names of all labor organizations known to the petitioner who claim to represent employees in the proposed unit;
- (d) the expiration dates and brief description of any contracts covering any employees in the proposed unit;
- (e) the approximate number of employees in the proposed unit; and any other relevant facts.

(1) The petition shall be accompanied by proof consisting of individualized cards or copies thereof which have been individually signed and dated within six months prior to the filing of the petition that the desire for organization represents 30 percent of the employees in the proposed unit.

(6) The division shall serve a copy of the petition upon the other party to the petition. (History: Sec. 39-32-103 MCA; IMP 39-32-106 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.305 EMPLOYER COUNTER PETITION (1) The party served by the division shall have five working days from receipt of the petition in which to file a counter petition with the division.

(2) The party served shall file a counter petition when the party served disagrees with the appropriateness of the proposed unit as described in the petition.

(3) The petition shall contain:

- (a) discussion of the nature of the disagreement with the petitioner(s) proposed appropriate unit;
- (b) description of the served party's proposed appropriate unit;
- (c) the number of employees in the served party's proposed unit;
- (d) the expiration dates and brief description of any contracts covering any employees in the served party's proposed unit; and
- (e) any other relevant facts.

(4) The division shall serve a copy of the counter petition upon the petitioner. (History: Sec. 39-32-103 MCA; IMP 39-32-106 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.306 NOTICE OF UNIT DETERMINATION PROCEEDINGS (1) The division shall require the employer to post in a con-

spicious manner a notice of unit determination proceedings. Such notice shall be provided by the division and shall remain posted for a period of 20 days.

(2) The employer shall confirm in writing to the division that it has received, posted, and shall continue posting the notice for the required 20 days. (History: Sec. 39-32-102 MCA; IMP 39-32-106 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.307 PETITION TO INTERVENE (1) Within 20 days from the first day of posting of the notice of unit determination proceedings, any labor organization or group of employees may file a petition to intervene.

(2) The petition shall contain the name and address of petitioner.

(3) The petition shall be accompanied by proof of interest consisting of authorization cards, or copies thereof which have been signed and dated within six months prior to the filing of the petition representing 10 percent of the employees in the unit.

(4) The petition to intervene shall conform in all other respects to the requirements for a petition for new unit determination and election.

(5) The division shall serve a copy of the petition to intervene upon all other parties. (History: Sec. 39-32-103 MCA; IMP 39-32-106 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.308 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION (1) The division shall direct an investigation of all questions and facts concerning the proposed unit, and shall have the following options:

- (a) to direct a unit determination hearing within 20 days after time for intervening has passed; or
- (b) to dispense with a unit determination hearing at its sole discretion, under the following conditions:

- (1) there has been no counter petition filed;
- (11) no intervenors contest the petitioner's proposed unit structure.

(2) After a hearing, the division shall issue its determination of the appropriate unit. If a unit petitioned for is found not to be appropriate, the findings and conclusions shall give specific reasons therefore. If the unit is found to be appropriate, the division shall schedule the election and a pre-election conference at which time challenges for individual inclusions and exclusions shall be made by either party. (History: Sec. 39-32-103 MCA; IMP 39-32-106 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

Sub-Chapter 4

Unit Clarifications

24.25.401 PETITION FOR UNIT CLARIFICATION OF BARGAINING

UNIT. (1) A Petition for Clarification of Bargaining Unit may be filed with the division only by a bargaining representative of the unit in question or by an employer and only if:

- (a) there is no question concerning representation;
 - (b) the parties to the agreement are neither engaged in negotiations nor within 120 days of the expiration date of the agreement;
 - (c) a petition for clarification has not been filed with the division concerning substantially the same unit within the past 12 months immediately preceding the filing of the petition; and
 - (d) no election has been held in substantially the same unit within the past 12 months immediately preceding the filing of the petition.
- (2) A copy of any such petition shall be served by the division upon the bargaining representative if filed by the employer and upon the employer if filed by a bargaining representative.
- (3) A petition for clarification of an existing bargaining unit shall contain the following:
- (a) the name and address of the bargaining representative involved;
 - (b) the name and address of the public employer involved;
 - (c) the identification and description of the existing bargaining unit;
 - (d) a description of the proposed clarification of the unit;
 - (e) the job classification(s) of employees as to whom the clarification issue is raised, and the number of employees on each such classification;
 - (f) a statement setting forth the reasons why petitioner desires a clarification of the unit;
 - (g) a statement that no other employee organization is certified to represent any of the employees who would be directly affected by the proposed clarification;
 - (h) a brief and concise statement of any other relevant facts; and
 - (i) the name, affiliation, if any, and the address of petitioner.
- (4) The party on whom the petition was served shall have 20 days to file a response with this division.
- (5) Upon a determination that a question of fact exists, this division may set the matter for hearing. Upon completion of the hearing this division may:
- (a) grant the petitioned for clarification in whole or in part; or

(b) deny the petitioned for clarification in whole or in part. (History: Sec. 39-32-103 MCA; IMP 39-32-106 MCA; NEW, 1979 MAR 1492-1493, Eff. 11/30/79.)

Sub-Chapter 5

Petitions for Decertification

24.25.501 PETITION FOR DECERTIFICATION (1) A petition for decertification of an exclusive representative shall be filed by an employee, a group of employees, or a labor organization, provided that 12 months have elapsed since the last election.

(2) The petition must be filed not more than 90 days before, and not less than 60 days before the termination date of the previous collective bargaining agreement, or upon the terminal date thereof. A contract whose duration is more than two years shall not be a bar to a decertification proceeding after the expiration of the second year.

(3) The original petition shall be signed by the petitioner(s) or their authorized representative.

(4) The original petition and five copies of the petition shall be filed with the division.

(5) The petition shall contain:

(a) the name and address of petitioner(s);
(b) a statement that the labor organization that has been certified or is currently being recognized by the employer as bargaining representative no longer represents the interests of the majority of the employees in the unit;

(c) the name of the labor organization, if any, which claims to be the majority representative;
(d) a description of the bargaining unit involved and the approximate number of employees; and
(e) any other relevant facts.

(6) The petition shall be accompanied by proof that 30 percent of the employees in the unit do not desire to be represented by the existing exclusive representative. This proof will consist of authenticating cards, or copies thereof, which have been individually signed and dated within six months prior to the filing of the petition.

(7) The division shall serve a copy of the petition upon the labor organization(s) concerned, and upon the employer. (History: Sec. 39-32-103 MCA; IMP 39-32-108(3) MCA; NEW, 1979 MAR 1492-1493, Eff. 11/30/79.)

24.25.502 ANSWER (1) Each party may file an answer to the petition for decertification within five working days after receipt thereof.

(2) The composition of the unit is not a proper matter to be considered in a decertification proceeding. Eligible voters for any decertification election shall be those who are members of the bargaining unit at the time of the filing of the petition. (History: Sec. 39-32-103 MCA; IMP, 39-32-108(3) MCA; NEW, 1979 MAR 1492-1493, Eff. 11/30/79.)

24.25.503 NOTICE OF DECERTIFICATION PROCEEDINGS (1) The division shall require the employer to post in a conspicuous manner, a notice of decertification proceedings. Such notice shall be provided by the division and shall remain posted for a period of 20 days.

(2) The employer shall confirm in writing to the division that it has received, posted, and shall continue posting of the notice for the required 20 days. (History: Sec. 39-32103 MCA; IMP, 39-32-108(3) MCA; NEW, 1979 MAR 1492-1493, Eff. 11/30/79.)

24.25.504 PETITION TO INTERVENE (1) Any labor organization or group of employees may file a petition to intervene within 20 days of the first day of posting of the notice of decertification proceedings.

(2) The original petition shall be signed by the petitioner(s) or their authorized representative.

(3) The original petition and five copies of the petition shall be filed with the division.

(4) The petition shall contain the name and address of petitioner(s).

(5) The petition shall be accompanied by proof of interest representing ten percent of the employees in the unit. This proof will consist of authorization cards, or copies thereof, which have been individually signed and dated within six months prior to the filing of the petition.

(6) The petition to intervene shall conform in all other respects to the requirements for a petition for decertification.

(7) The division shall serve a copy of the petition to intervene upon all other parties. (History: Sec. 39-32-103 MCA; IMP 39-32-108(3) MCA; NEW, 1979 MAR 1492-1493, Eff. 11/30/79.)

24.25.505 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION (1) The division shall direct an investigation of all questions and facts concerning the proposed decertification and shall have the following options:
(a) to direct a hearing if deemed appropriate, after which the election and a pre-election conference shall be scheduled; or

(b) to schedule the election and a pre-election conference. (History: Sec. 39-32-103 MCA; IMP 39-32-108(3) MCA; NEW, 1979 MAR 1492-1493, Eff. 11/30/79.)

COLLECTIVE BARGAINING FOR NURSES

24-25-605

Sub-Chapter 6

24-25-606

LABOR AND INDUSTRY

Elections

24-25-601. ELECTION DIRECTED. (1) The division shall direct an election to be conducted by an employee of the division on where an appropriate unit has been determined and a question of representation exists. Where a petition for an election has been filed, the election shall be conducted under the direction and supervision of the division. With all determinations by an employee, (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24-25-602. CONDITIONS. (1) All elections shall be held at such times and places and upon such terms as the division may specify. (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24-25-603. SECRET BALLOT. (1) All elections shall be by secret ballot. (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24-25-604. ELIGIBLE VOTERS. (1) The employees eligible to vote shall be those within the unit on the date of the filing of the petition excluding those employees who have voluntarily terminated their employment between the filing date and the date of the election.

(2) At least seven days prior to the election, the employer shall furnish to each labor organization which is party to the proceeding, a list of names and addresses of the employees eligible to vote. (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24-25-605. NOTICE. (1) Not more than 20 calendar days nor less than 10 calendar days prior to any election set by the division, the division shall cause to be prepared and distributed a Notice of Election specifying the date and place thereof; the hours the polls will be open, the classification of employees in the appropriate unit for which the election is to be conducted; rules concerning eligibility to vote; a sample ballot; and such additional information and instruction as the division may consider appropriate. Copies of the Notice of Election and the sample ballot will be sent to all labor organizations appearing on the ballot and to the employer. The employer shall cause copies of the Notice of Election and the sample ballot to be posted for at least five working days prior to the election at work locations where notices are normally posted for the benefit of employees in the appropriate unit. The posting requirement may be modified by mutual

agreement of management and the parties appearing on the ballot. (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24-25-606. BALLOTS. (1) The rank order of the employee organization names to be placed on the ballot will be determined during the pre-election hearing. "No Representation" will always be listed as the last choice. (2) Only those labor organizations which have been designated by more than ten percent of the employees in the unit shall be placed on the ballot.

(3) Absentee ballots shall not be allowed. (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24-25-607. POLL WATCHERS. (1) Each party to the election shall be entitled to be represented by an equal number of observers watching at each polling place. Observers shall be employees eligible to vote, or in the case of employer's observers, shall be any appropriate persons who are not on the list of eligible voters. Each party may observe the ballot counting. (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24-25-608. POLLING AREA ELECTIONEERING. (1) Prior to the commencement of the election the employee of the division shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election. (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24-25-609. CHALLENGES. (1) All employees whose names appear on the list certified by the division as being a complete list of the employees within the defined appropriate unit shall be eligible to vote.

(2) Any prospective voter may be challenged for cause.

(3) All employees whose names do not appear upon the list certified by the division as being a complete list of the employees within the defined appropriate unit shall be challenged by the agent of the division.

(4) A challenged voter shall be permitted to vote but his ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the employees of the division and then inserted in a special tamper-proof form envelope provided by the division for that purpose and returned to the division. (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24.25.610 MAJORITY (1) In all elections, a majority of the valid votes cast shall determine the employees' representative to be certified. In the case of the employees' certification shall be issued. (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.611 OBJECTIONS (1) Within five working days after the tally of ballots has been furnished, any party may file with the division, objections to the conduct of the election or conduct affecting the results of the election. Such objections shall be in writing and shall contain a brief statement of facts upon which the objections are based. An original and five copies of such objections shall be signed and filed with the division, the original being sworn to. The party filing an objection shall serve a copy upon each of the other parties to the election. (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.612 CERTIFICATION (1) If no objections are filed within the time set forth above, and if the challenged ballots are insufficient in number to affect the result of the election, the division shall forthwith issue to the parties a certification of representative, where appropriate. (History: Sec. 39-32-103 MCA; IMP, 39-32-108 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

Sub-Chapter 7

Improper Employment Practices

24.25.701 COMPLAINT (1) A complainant alleging that a person has engaged in or is engaging in an improper employment practice may be filed by an employee, or a group of employees, a labor organization.

(2) A complaint shall be in writing. The original shall be signed and verified by the complainant or his authorized representative. The original and five copies of the complaint shall be filed with the division. The division shall serve one copy of the complaint on each party named in the complaint.

(3) A complaint shall contain the following:

- (a) the name, address and telephone number of the complainant;
 - (b) the name, address and telephone number of the party against whom the charge is made; and
 - (c) a clear and concise statement of facts constituting the alleged violation, including the time and place of occurrence of the particular acts and a statement of the portion or portions of the law or rules alleged to have been violated.
- (4) If the division determines that the facts alleged in the complaint do not constitute an improper employment practice under Section 39-32-103 MCA, it shall dismiss the charge. (History: Sec. 39-32-103 MCA; IMP, 39-32-109 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.702 ANSWER (1) The party named in the complaint shall file a written verified answer within ten days after service of the complaint.

(2) One copy of the answer shall be served on the complainant, and the original, with proof of due service and five copies, shall be filed with the division.

(3) The answer shall include a specific admission, denial, or explanation of each allegation in the complaint.

(4) If the party charged fails to file a timely answer, the division may consider it an admission of material facts, and waiver of a hearing. (History: Sec. 39-32-103 MCA; IMP 39-32-109 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.703 NOTICE OF HEARING (1) After the time for filing an answer has passed, the division shall serve a notice of hearing upon the parties. The hearing date shall not be less than five nor more than 20 working days from the date of service. The notice shall include all those items listed in section 2-4-601, MCA, and shall state who will hear the complaint. (History: Sec. 39-32-103 MCA; IMP 39-32-109 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24-25.704 PROPOSED FINDINGS (1) The hearing examiner may request proposed findings of fact and conclusions of law. (History: Sec. 39-32-103 MCA; IMP 39-32-109 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

Sub-Chapter 8

Impasse

24-25.801 PETITION (1) In the event of an impasse, a petition, in writing, requesting assistance of the division, may be filed with the division by an employee or group of employees, a labor organization, or employer. The original of the petition shall be signed by the petitioner or his authorized representative, and the original and five copies thereof shall be filed with the division. The petitioner shall receive a copy of the petition simultaneously upon any party to the petition. The petition shall contain: (a) name, address, and telephone number of petitioner or authorized representative; (b) name, address, and telephone number of the employer; (c) description of unit involved; (d) name, address, and telephone number of the recognized or certified labor organization and authorized representative thereof; (e) description of the dispute in detail; (f) statement as to what assistance is requested; and (g) statement indicating if the request is unilateral or joint.

(2) A petition may be withdrawn with the consent of the division. (History: Sec. 39-32-103 MCA; IMP 39-32-110 MCA; NEW, 1979 MAR p. 1492-1493, Eff. 11/30/79.)

24-25.802 MEDIATION (1) Upon petition, the division, any member or employee thereof designated by the division, or any other competent, impartial, disinterested person designated by the division may act as the mediator in a dispute or, if available, the division may request a mediator from the Federal Mediation and Conciliation Service or from the American Arbitration Association.

(2) Any information disclosed to the mediator in the performance of his duties shall not be divulged unless approved by the parties involved. All files, records, reports, documents, or other papers received or prepared by the mediator shall be classified as confidential and not as a public record. Such matters shall not be disclosed to anyone without the prior consent of the division.

(3) The mediator shall not produce any confidential records or testimony with regard to any mediation conducted by him on behalf of the party to any case pending in any proceeding before any court, board, investigatory body, arbitrator, or fact finder without the written consent of the division.

(4) The mediator may hold separate or joint meetings with the parties or their representatives, and such meetings shall be private and nonpublic, except if otherwise mutually agreed upon by the parties.

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CHAPTER 26

BOARD OF PERSONNEL APPEALS

(5) The mediator shall, within 30 days of his designation, report in writing the progress of his mediation efforts, as well as the terms of the settlement of the dispute, if any, to the division. (History: Sec. 39-32-103 MCA; IMP 39-32-110 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.803 FACT FINDER. (1) Either party to a dispute may petition the division to initiate fact-finding or, if it is apparent that matters in disagreement might be more readily settled if facts involved were determined and publicly known, the division may initiate fact-finding.

(2) Within three days of receipt of a petition for fact finding, the division shall submit a list of five qualified, disinterested persons to each of the parties to the dispute. (3) Within five days of receipt of the list, the parties shall select then the other party strike two names. The remaining name is that of the fact finder.

(4) The parties shall immediately notify the division of the name of the fact finder. The board shall notify the fact finder and request him to immediately establish dates and places of hearings.

(5) Within 20 days from his notification by the division, the fact finder shall make written findings of fact and recommendations for resolution of the dispute. The findings shall be served on both parties and a copy sent to the division.

(6) The fact finder may request the division to make the report public five days after the parties are served with the findings.

(7) Fifteen days after the parties are served the division shall provide that the report is open to public inspection.

(8) The fact finder shall submit his costs and fees to the division which shall send copies of an invoice of the parties on which they will be billed for one-third of the total. The parties shall pay the division within five days and the division shall forward the total amount to the fact finder. (History: Sec. 39-32-103 MCA; IMP 39-32-110 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

24.25.804 ARBITRATION (1) The parties may, at any period in the negotiations, agree to submit the issues to binding arbitration.

(2) Both parties shall jointly notify the division in writing of this decision and of the identity of the arbitrator.

(3) The parties may petition the division to assist in the selection of the arbitrator in accordance with rule 24.25.801

(4) The arbitrator shall render a decision within 30 days of his appointment. (History: Sec. 39-32-103 MCA; IMP 39-32-110 MCA; NEW, 1979 MAR P. 1492-1493, Eff. 11/30/79.)

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BOARD OF PERSONNEL APPEALS

24.26.202

Sub-Chapter 1

Organization

24.26.101 ORGANIZATION OF BOARD OF PERSONNEL APPEALS

(1) The Board of Personnel Appeals of the Department of Labor and Industry herein adopts and incorporates the organizational structure of the Board of Personnel Appeals as it has been set out and explained in Chapter 1 of Title 24, MCA, and the Rules of the Board of Personnel Appeals, effective 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78.)

24.26.102 BOARD MEETINGS. QUORUM (1) The Board of Personnel Appeals shall meet upon the call of the Chairman or at the written request of three members at a time and place designated by the chairman or members calling the meeting.

(2) A majority of the membership constitutes a quorum to do business. A contested case may be heard only by the entire board, or by three members of the board, with at least one member representing the neutral position, one member representing management, and one member representing employees or employee organizations.

(3) The board shall select a member or an agent to act as administrator of the board. (History: Sec. 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78.)

Sub-Chapter 2

Procedural Rules

24.26.201 ADOPTION OF ATTORNEY GENERAL MODEL RULES

(1) Pursuant to the authority vested in the Board of Personnel Appeals of the Department of Labor and Industry, this board adopts the model rules proposed by the attorney general as adopted by the Department of Labor and Industry. (History: Sec. 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78.)

24.26.202 BOARD ADDRESS. (1) All requests, petitions, and other correspondence to the board should be addressed to the Board of Personnel Appeals, Capital Station, Helena, MT 59601. (History: Sec. 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78.)

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24.26.203

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24.26.203 SERVICE OF PROCESS All service and computation of time in proceedings before this board shall be bound by the Montana Rules of Civil Procedure. (History: Sec. 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78.)

BOARD OF PERSONNEL APPEALS

24.26.215

24.26.204 INTERVENTION (1) Any state employee, group of state employees, employee representative, or public employer may be permitted to intervene by serving a motion to intervene upon the parties and the board. The motion shall be accompanied by affidavits establishing a basis for intervention. The board shall determine the validity of the basis for intervention. (History: Sec. 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78.)

24.26.205 AMENDING PETITIONS (1) Any petition may be amended, in whole or in part, by the petitioner or the board, or withdrawn by the petitioner at any time prior to the casting of the first ballot. In an election, the board shall consider proper and just. (History: Sec. 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78.)

Rules 24.26.205 through 24.26.209 Reserved

24.26.210 CONTESTED CASES, DEFAULT ORDER WHEN PARTY FAILS TO APPEAR AT HEARING (1) When a notice of a hearing has been given but a party fails to appear at the time specified for that hearing, the Board of Personnel Appeals shall enter an order at that time, stating the evidence in support of the board's action. If the defaulting party is able to show good cause for his absence, the order shall be vacated and a new hearing date set. (History: Sec. 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78.)

Rule 24.26.211 Reserved

24.26.212 MOTIONS (1) All motions other than those made during a hearing shall be made in writing and submitted to the board. They shall briefly state the relief sought, and shall be accompanied by affidavits setting forth the grounds upon which they are based. The moving party shall serve a copy of all motions on all other parties and shall file with the board the original with proof of service. Answering

affidavits, if any, must be served on all parties and the original thereof, together with proof of service, shall be filed with the board within five days after service of the moving papers, unless the board directs otherwise. The board may decide to hear oral argument or testimony thereon. (2) Motions for postponements of hearing or conference scheduled by the division will not be granted unless good and sufficient cause is shown and the following requirements are met: The request must be in writing directed to the Administrator or hearing examiner. (a) The request must be set forth in detail. (b) The grounds for the request must be ascertained in advance by the requesting party and set forth in the request. (c) The position of all parties must be ascertained in advance by the requesting party and set forth in the request. (d) Copies of the request must be served contemporaneously on all parties, and that fact must be noted on the request. (e) The request must be signed by the person making it. (f) Except for good cause shown, no request for postponement will be granted on any of the three days immediately preceding the date of the hearing or conference. (History: Sec. 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78; AMD. 1979 MAR p. 1494, Eff. 11/30/79.)

Rules 24.26.213 and 24.26.214 Reserved

24.26.215 HEARINGS (1) The board shall conduct its hearings in accordance with the appropriate provisions of the Administrative Procedure Act.

(2) If a member of the board or an examiner appointed by the board presides over the hearing, the member, or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding findings of fact, conclusions of law and recommended order, which shall be filed with the board, and if no written exceptions specifically stating to which part of the recommended order exception is being taken are filed with this board within 30 days after service of the recommended order upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board.

(3) If the board presides over the hearing, the board shall cause to be served on the parties to the proceeding a final order. (History: Sec. 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78; AMD. 1979 MAR p. 1494, Eff. 11/30/79.)

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24.26.217 LABOR AND INDUSTRY

Rule 24.26.216 Reserved

24.26.217 EXTENSION OR WAIVER OF TIME LIMITS (1) Time limits provided for in these rules may be waived or extended as follows:

- (a) by written agreement between the parties, subject to final approval of the board; or
- (b) by motion to the board, subject to the granting of the motion by the board. (History: Sec. 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78.)

Rule 24.26.218 Reserved

24.26.219 SUSPENSION (1) At the discretion of the board, those rules may be waived or suspended at any time in any proceeding unless such action results in a denial of the right of subsisting rights. (History: Sec. 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78.)

Rules 24.26.220 through 24.26.229 Reserved

24.26.230 SEVERABILITY (1) If any one of these rules is held to be invalid, it shall not invalidate any other rule. (History: Sec. 2-4-201, MCA; IMP 2-4-201, MCA; NEW 1978 MAR p. 74, Eff. 1/25/78; AMD. 1978 MAR p. 192, Eff. 2/24/78.)

BOARD OF PERSONNEL APPEALS

24.26.303

Sub-Chapter 3

Department of Highways Grievances

24.26.301 PURPOSE (1) The purpose of these rules is to provide all employees of the Montana department of highways with a clearly and uniform method to file and process personnel grievances. (History: Sec. 2-18-1001, MCA; IMP 2-18-1002, MCA; NEW, Eff. 5/5/75)

24.26.302 DEFINITIONS (1) "Employee" means any person employed in the Montana department of highways.

(2) "Employee grievance" means an employee's dissatisfaction concerning a serious matter of his employment based upon working conditions, supervision, or the result of administrative action except those arising from the Classification and Wage Act, as provided in 2-18-1011, MCA.

(3) "Board" means the board of personnel appeals or its designated agent.

(4) "Working days" means all calendar days except Saturdays, Sundays and holidays.

(5) "Form" means the highway department personnel grievance form, BPA-B(1).

(6) "Quasijudicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes, but is not limited to, the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; ordering action or abatement of action; adopting procedural rules; holding hearings, and any other act necessary to the performance of a quasijudicial function.

(7) "Department head" means the director of highways.

(8) "Department" means the Montana department of highways. (History: Sec. 2-18-1001, MCA; IMP, 2-18-1002, MCA; NEW, Eff. 5/5/75.)

24.26.303 GRIEVANCE PROCEDURE (1) Step one

(a) An employee, group of employees, or employee representative, may utilize the formal grievance procedure, after exhausting all available informal remedies within the department of highways as set forth in the department's rules or regulations, by obtaining a personal grievance form BPA-B(1) and submitting it to the employee's immediate supervisor for consideration.

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(b) The immediate supervisor shall have three working days to examine the grievance, to record his findings and to indicate support or nonsupport of the grievance on the form, and return the form to the employee.

(c) The employee shall have three working days to accept or reject the immediate supervisor's evaluation and findings by completing the appropriate section on the form, and forwarding the grievance to step two.

(2) Step two
(a) If the immediate supervisor's response is late or if the response is returned to the employee and the employee wishes to continue the grievance, the employee shall do so by submitting the form with all appropriate sections completed to the department head for review.

(b) The department head shall have five working days to review the grievance, to record findings in the appropriate section of the form, to indicate support or nonsupport of the grievance, and to return it to the employee.

(c) The employee shall have five working days to accept or reject the department head's evaluation and findings by completing the appropriate section of the form, and forwarding the grievance to step three.

(1) In the event the employee accepts the department head's findings and recommendation, the recommendation shall become effective upon notification to the department head by the employee.

(11) In the event the employee rejects the department head's recommendation, the employee may submit the grievance for final resolution to step three.

(3) Step three

(a) If the department head's response is late or if the response is returned to the employee and the employee wishes to continue the grievance, the employee shall do so by submitting the form, with all appropriate sections completed, to the board of personnel appeals for final resolution.

(b) The board of personnel appeals shall have ten days from receipt of the form to conduct its inquiry and render a preliminary decision. The department and the employee shall have five days to accept or reject the preliminary decision. If the department and the employee accept the preliminary decision, it shall become the final decision. If the employee or the department rejects the preliminary decision, the board, a member of the board, or an examiner appointed by the board shall conduct a hearing in accordance with appropriate provisions of the Administrative Procedure Act within 20 days of rejection of the preliminary decision.

(c) If a member of the board or an examiner appointed by the board presides over the hearing, the member, or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision together with the recommended order, which shall be filed with the board and if no exceptions are filed within 20 days after service thereof, upon the parties, or within such further period as the board may prescribe, the recommended order shall become the order of the board. The recommended order shall be the order of the board, the recommended order shall cause to be served on the parties to the proceeding a final decision together with a final order (History: Sec. 2-18-1001, MCA; IMP 2-18-1002, MCA; NEW Eff. 5/5/75.)

24.26.304 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION

(1) Any employee who files a grievance or who testifies or submits evidence in any proceeding in this chapter shall be assured freedom from restraint, interference, coercion, or reprisal and if these freedoms are denied the employee through supervisory or administrative action, the employee shall be entitled to file a grievance with the board.

(2) If a grievance is filed pursuant to this rule, the board shall serve the grievance upon the department and the department shall have ten days in which to respond to the grievance. After the ten days have elapsed, the board shall commence with step three b of the formal grievance procedure provided in ARM 24.26.202. (History: Sec. 2-18-1001, MCA; IMP, 2-18-1001(2), MCA; NEW Eff. 5/5/75.)

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Sub-Chapter 4

Department of Fish, Wildlife, and Parks Grievance

24-26.401 PURPOSE (1) The purpose of these rules is to provide all employees of the Montana department of fish, wildlife, and parks with a procedure to file and process personnel grievances. (History: Sec. 87-1-205, MCA; IMP, 87-1-205, MCA; NEW, 1978 MAR p. 75, Eff. 1/25/78.)

24-26.402 DEFINITIONS (1) "Employee" means any person employed in the Montana department of fish, wildlife, and parks.

(2) "Employee grievance" means an employee's dissatisfaction concerning a serious matter of his employment based upon working conditions, supervision, or the result of administrative action taken by those arising from the operation of the statewide classification and pay plan as provided in 2-18-1011, MCA.

(3) "Board" means the board of personnel appeals or its designated agent.

(4) "Department head" means the director of the department of fish, wildlife, and parks.

(5) "Department" means the Montana department of fish, wildlife, and parks. (History: Sec. 87-1-205, MCA; IMP, 87-1-205, MCA; NEW, 1978 MAR p. 75, Eff. 1/25/78.)

24-26.403 GRIEVANCE PROCEDURE (1) If after exhausting the internal grievance procedure as provided by the personnel policies of the department, an employee does not believe that his grievance based upon working conditions, supervision, or the result of an administrative action has been resolved to his satisfaction, the employee may file a formal grievance with this board.

(2) To file a grievance with this board the employee shall file with this board a letter with the following information:

- (a) the employee's name,
- (b) the employee's position classification,
- (c) which division and bureau the employee works for,
- (d) a statement of what the nature of the grievance is,

and (e) a statement of how the internal grievance procedure has been followed.

(3) Upon receipt of the letter from the employee, this board shall serve a copy of the letter on the department and a summons directing the department to submit to this board a

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position paper on the grievance within ten days after the service of the letter, accompanied by certificate of service certifying that a copy of the position paper has been served on the grievant.

(4) After the ten days have elapsed from the date of service of the letter, the board may set the matter for a hearing de novo. However, upon the stipulation of both parties to the grievance, the matter may be submitted to the board for decision on the record of the proceedings before the department. (History: Sec. 87-1-205, MCA; IMP, 87-1-205, MCA; NEW, 1978 MAR p. 75, Eff. 1/25/78.)

24-26.404 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION (1) If the department directly or indirectly interferes, restrains, coerces, or retaliates against an employee because the employee has filed or attempted to file a grievance with the board, the employee shall be entitled to file a complaint with the board.

(2) The complaint shall be in writing and shall contain a clear and concise statement of facts constituting the alleged interference, restraint, coercion, or retaliation.

(3) The board shall serve the complaint upon the department and the department shall have ten days from the date of service of the complaint upon it to respond to the complaint. The response shall be filed with this board accompanied by a certificate of service certifying that the complainant has been served with a copy of the response.

(4) After the ten days have elapsed from the date of service of the complaint, the board may set the matter for hearing. (History: Sec. 87-1-205, MCA; IMP, 87-1-205, MCA; NEW, 1978 MAR p. 75, Eff. 1/25/78.)

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Sub-Chapter 5

Wage and Classification Appeals

24.26.501 PURPOSE (1) The purpose of these regulations is to provide all classified employees of the State of Montana an orderly and uniform method to file and process appeals arising from the operation of the state employees' classification and pay plan title 2, chapter 18, MCA. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75.)

24.26.502 DEFINITIONS (1) "Employee" means any person employed by the state of Montana, except: elected officials and their chief deputy and executive secretary; officers and employees of the legislative branch; judges and employees of the judicial branch; members of boards and commissions appointed by the governor, appointed by the legislature or members of the militia; agency heads appointed by the governor; academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education; personal staff of the executive officials enumerated in article VI, section one of the constitution of Montana.

(2) "Agency" means any department, board, commission, office, bureau, institution or unit of state government recognized in the state budget.

(3) "Department" means one of the 20 principal departments within the executive branch, as provided by the constitution.

(4) "Department head" means a director, commissioner, board, commissioner, or constitutional officer in charge of a department.

(5) "Board" means the board of personnel appeals or its designated agent.

(6) "Personnel division" means the personnel division of the department of administration.

(7) "Inquiry" means the process of gathering and weighing evidence bearing on appeals. This process may include securing documents, holding individual interviews or group meetings, conducting a hearing, or any combination of the above.

(8) "Appeal" means any complaint filed with the board of personnel appeals relating to the operation of the state employees' classification and pay plan, title 2, chapter 18, MCA.

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(9) "Working days" means all calendar days except Saturdays, Sundays, or legal holidays.

(10) "Form" means the state employees classification and wage appeal form BPA-C(1).

(11) "Formal appeals procedure" means the appeals procedure provided for state employees in 24.26.508. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75.)

24.26.503 INFORMAL RESOLUTION OF APPEALS (1) The board encourages the personnel division and state employees to attempt to resolve appeals through an informal procedure as prescribed by the personnel division before initiating the formal appeals procedure. Any employee who wishes to file an appeal should first attempt to resolve the appeal at the earliest opportunity. If the employee is unable to resolve the appeal, the employee should file an appeal with the immediate supervisor. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75; AND, 1981 MAR P.C.4, Eff. 6/26/81.)

Rules 24.26.504 through 24.26.507 Reserved

24.26.508 GRIEVANCE PROCEDURE (1) Step One. Any employee, group of employees, or appropriately designated representatives, may utilize the formal appeals procedure. The individual employee must obtain a state employee classification and wage appeal form BPA-C(1) and follow the accompanying instructions. In the case of a group appeal, a group of employees must comply with the rules governing group appeals (24.26.404). Forms may be obtained from the board of personnel appeals, capitol station, Helena, Montana, or from the personnel offices of all departments within the executive branch.

(a) The appropriate form when completed shall be submitted to the immediate supervisor.

(b) To complete the form, the employee must clearly identify the issue or issues motivating the appeal. A list of appealable issues will be provided with the appeal form. The employee must explain in detail the issue and their reasons for appealing. If an issue or reason for the appeal is not adequately identified, the appeal may be returned to the employee at any step in the appeal procedure.

(c) Appealable issues are the following:

(1) The class specification doesn't adequately describe my position duties.

(ii) A different class specification is a better description of my position duties.

(iii) The class title is inappropriate for my position.

(iv) The minimum qualifications are not equivalent to those required to do my job.

(v) Other positions assigned to the same class have less difficult work than my position.

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- (vi) My position duties are more similar to positions assigned to a different class.
- (vii) Other positions assigned to the same class perform duties significantly different than my position duties.
- (viii) The position description for my position class does not adequately describe the duties and responsibilities assigned to my position.
- (ix) There are significant responsibilities assigned to my position which are not included in the position description.
- (x) There are significant duties described in the position description which are not performed by this position.
- (xi) There is not a current position description available for my position.
- (xii) The pay plan rules have been incorrectly applied to my position (specific rules(s) should be cited).
- (xiii) (other) must specifically relate to position classification.
- (d) The immediate supervisor shall have ten working days to examine the appeal, attempt to resolve the complaint, record his or her findings, record steps taken (if any) to resolve appeal, and return the form to the employee.
- (e) If the immediate supervisor feels the employee appeal has merit, the immediate supervisor may initiate a request for reclassification through the agency personnel officer or request an administrative review of the classification of the employee's position, or redescribe the position duties to more adequately reflect actual work performed or initiate and complete other steps to address the identified issue. The employee should continue the appeal even if administrative action is underway.
- (f) If the employee does not accept the findings of the immediate supervisor, the employee shall have five working days to forward the evaluation and findings of the immediate supervisor to step two.

- (2) Step Two
- (a) If the employee chooses to continue the appeal, the employee shall submit the form with all appropriate sections completed to the department head for review.
- (b) The department head shall have five working days to review the appeal, record his or her findings, record steps taken to resolve the appeal, and return it to the employee.
- (c) If the employee does not accept the findings of the department head, the employee shall have five working days to forward the evaluation and findings of the department head to step three.
- (3) Step Three
- (a) If the employee chooses to continue the appeal, the employee shall submit the form with all appropriate sections completed to the personnel division for review.

- (b) The personnel division shall have 30 working days to review the matter, record its findings in the appropriate section of the form, and to issue its recommended adjustment and return it to the employee or the proper representative.
- (c) The personnel division's review and findings shall be limited to the issue(s) identified in step one of the appeal. Any additional issues identified at step three will be addressed through informal, administrative procedures as determined by the personnel division.
- (d) The personnel division will prepare detailed written findings in response to the issue(s) identified at step one.
- (e) If the employee accepts the personnel division's findings and recommendation, the formal appeals procedure is concluded upon the implementation of the personnel division's findings and recommendations.
- (f) The employee shall have 10 working days to forward the appeal to the board for resolution.
- (4) Step Four
- (a) If the employee rejects the personnel division's findings and recommendation, the employee shall submit the form BPA-C(1), with all appropriate sections completed, to the board.
- (b) The employee must identify and record where they feel the personnel division's findings are in error.
- (c) The board shall have 10 working days to accept or reject the appeal for hearing at step four.
- (d) The board shall examine the issue(s) and exceptions identified by the employee. If the issue(s) and exceptions are adequately described, the board will accept the appeal at step four.
- (e) If the board finds the issue identified at step one to be inadequately described, the board shall return the appeal to the employee. In such case, the employee may re-describe the issue and refile the appeal at step one within 10 working days.
- (f) If the board finds the personnel division's written findings or the employee's exceptions to the written findings are not adequately described, the board shall return the appeal to the appropriate party. In such case, the party will expand its findings or exceptions and refile them with the board within 10 working days.
- (g) If in the board's discretion it decides to conduct a preliminary investigation in the appeal, it shall have 20 days to do so. The board may carry out any investigations deemed necessary for resolution of the appeal or complaint. The employee or group of employees and personnel division shall have ten days to accept or reject the preliminary decision. If the employee or group of employees and the personnel division accept the preliminary decision, it shall be final and binding. The board shall then implement

the preliminary decision by instructing the personnel division to remedy the situation.

(e) If the employee, group of employees, or the Personnel Division reject the preliminary decision of the board in its discretion decides not to conduct a preliminary investigation, the board or an agent appointed by the board shall conduct a hearing in accordance with title 2, chapter 4, MCA.

(f) Any investigation and/or hearing conducted by the board shall be restricted to the issue identified at Step One.

(g) If the preponderance of evidence taken at the hearing shows the employee is aggrieved, the board shall issue an order requiring action to resolve the employee's grievance.

(h) Upon the conclusion of the hearings process, the board shall issue its proposed findings of fact, conclusions of law, and recommended order within 90 working days.

(i) The prescribed time limits at any step of the appeals process may be modified or waived upon mutual agreement of all parties. (History: Sec. 2-18-1011, MCA; IMF, 2-18-1011, MCA; NEW, Eff. 7/5/75; AMD, Eff. 12/4/76; AMD 1978 PAR p. 74; AMD, 1981 PAR p. 624, Eff. 6/26/81.)

Rules 24.26.509 through 24.26.512 Reserved

24.26.513 GROUP APPEALS (1) If the facts of a given appeal affect a large number of employees in the same manner as that affecting one employee and the conditions of Rule 23 of the Montana Rules of Civil Procedure are met, the board may designate the appeal a group appeal. Notice of intent to maintain a group appeal shall immediately be sent to the board. As soon as practicable

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after notice is sent, the board shall approve or disapprove the group appeal. Such decision may be conditional, and may be altered or amended at any time before final determination by the board after a hearing.

(3) Rule 23 shall also govern notice to members of the group, withdrawal of a member from a group, use of his own counsel, by a group member, the effect of board findings on a group, maintenance of a group action in regard to particular issues or subclasses, supplementary orders controlling conduct of the action, and dismissal or compromise of the appeal.

(4) In a case designated as a group appeal by the board, the appeal shall begin at step three of the final appeals procedure provided in 24.26.403 (History: Sec. 2-18-1011, MCA; IMF, 2-18-1011, MCA; NEW, Eff. 7/5/75)

Rules 24.26.514 through 24.26.517 Reserved

24.26.518 FAILURE OF SUPERVISOR, DEPARTMENT HEAD, OR PERSONNEL DIVISION TO ACT WITHIN PRESCRIBED TIME LIMIT (1) If the immediate supervisor, department head, or the personnel division does not respond to an employee's appeal within the prescribed time limits in the appeals procedure, the employee may forward his appeal to the next step in the appeals procedure by forwarding his original copy of form BPA-C(1) and a new copy of form BPA-C(1) to the next step within five days of the expiration of the time limit. (History: Sec 2-18-1011, MCA; IMF, 2-18-1011, MCA; NEW, Eff. 7/5/75.)

Rules 24.26.517 through 24.26.522 Reserved

24.26.523 FILING OF A NEW PETITION FOR HEARING AFTER FINAL ORDER ISSUED

(1) After a final order concerning a position has been issued by the board, a new hearing will be granted only upon a showing of some substantial change in that position which was not considered at the prior hearing and which would warrant a new hearing by the board.

(2) The employee shall include with his petition a signed affidavit stating the substantial change.

(3) The petition and the affidavit shall proceed through the appeals procedure as prescribed in ARM 24.26.508 up to step four B.

(4) The staff shall then conduct a preliminary investigation to determine if the alleged substantial change warrants a new hearing.

(a) If it is determined that the alleged substantial

change warrants a new hearing, the appeal procedure shall proceed as prescribed in ARM 24.26.508.
(b) If it is determined that the alleged substantial change does not warrant a new hearing, the petition shall be dismissed.

(5) The order to dismiss shall be an appealable order. (History: Sec. 2-18-1011, MCA; IME, 2-18-1011, MCA; NEW, Eff. 1/4/76.)

Rules 24.26.524 through 24.26.529 Reserved

24.26.530 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION (1) If an employee's supervisor, or the agency for which the employee works, directly or indirectly interferes, restrains, coerces or retaliates against an employee because the employee has filed or attempted to file a grievance with the board, the employee shall be entitled to file a complaint with the board.

(2) The complaint shall be in writing and shall contain a clear and concise statement of facts constituting the alleged interference, restraint, coercion or retaliation.

(3) The Board shall advise the employee of the employee's supervisor or the agency for which the employee works and the supervisor or agency shall have ten days from the date of service of the complaint upon them to respond to the complaint.

(4) After ten days have elapsed from the date of service of the complaint, the board shall commence with steps of the formal appeals procedure. (History: Sec. 2-18-1011, MCA; IME, 2-18-1011, MCA; NEW, Eff. 7/5/75.)

Sub-Chapter 6

Public Employees Collective Bargaining

General Provisions

24.26.601 DEFINITIONS (1) The board hereby adopts the definitions set forth in Section 39-31-103, MCA.

(2) The word "board" means the board of personnel appeals and in the proper context may also mean an agent appointed by the board to perform certain board functions. (History: Sec. 39-31-104, MCA; IME, 39-31-104, MCA; NEW, Eff. 6/14/74.)

24.26.602 FILING OF NEGOTIATED AGREEMENTS AND DURATION (1) One copy of each collective bargaining contract between a public employer and a labor organization shall be filed with the board within 30 days after the final execution thereof.

(2) Agreements reached between a public employer and a labor organization shall be for a minimum of one year in duration and shall not exceed two years. (History: Sec. 39-31-104, MCA; IME, 39-31-104, MCA; NEW, Eff. 6/4/74.)

24.26.603 FILING OF LABOR ORGANIZATION'S BYLAWS (1) Any employee organization seeking certification from the board as exclusive representative of a group of employees must first file with the board a copy of the labor organization's written bylaws. The bylaws must be filed only once with the board. If any revisions or changes are made, the bylaws must be refiled.

(2) The bylaws must provide for and guarantee that: (a) Provisions are made for democratic organization and procedures.

(b) Elections are held pursuant to adequate standards and safeguards.

(c) Controls are provided for the regulation of officers and agents having fiduciary responsibility.

(d) Sound accounting, fiscal control, and annual audit requirements exist. (History: Sec. 39-31-104, MCA; IME, 39-31-206, MCA; NEW, Eff. 6/4/74.)

24.26.604 PROOF OF INTEREST CONFIDENTIAL (1) The proof of interest submitted with any petition shall not be furnished to any of the parties. The board shall consider the adequacy of the showing of interest and such decision

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shall not be subject to challenge. (History: Sec. 39-31-104, MCA; IME, 39-31-207, MCA; NEW, Eff. 6/4/74.)

Rules 24.26.605 through 24.26.609 Reserved

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24.26.612

Unit Determinations

24.26.610 COMPOSITION OF UNIT (1) A unit may consist of all of the employees of the employer or any department, division, bureau, section, or combination thereof if found to be appropriate by the board. (History: Sec. 39-31-104, MCA; IME 39-31-202, MCA; NEW, Eff. 6/4/74.)

24.26.611 APPROPRIATE UNIT (1) In considering whether a bargaining unit is appropriate, the board shall consider such factors as:

- (a) community of interest;
- (b) wages;
- (c) hours;
- (d) fringe benefits and other working conditions;
- (e) the history of collective bargaining;
- (f) common supervision;
- (g) common personnel policies;
- (h) extent of integration of work functions and interchange among employees affected; and
- (i) desires of the employees. (History: Sec. 39-31-104, MCA; IME 39-31-202, MCA; NEW, Eff. 6/4/74.)

24.26.612 PETITIONS FOR NEW NEW UNIT DETERMINATION AND ELECTION (1) A petition for new unit determination and election shall be filed with the board by a labor organization or a group of employees.

(2) The original petition shall be signed by the petitioner(s) or their authorized representative.

(3) The original petition and five copies of the petition shall be filed with the board.

(4) The petition shall contain:

- (a) a description of the unit to be determined specifying inclusions and exclusions;

- (b) a statement as to whether there is any known disagreement between the employer and the petitioner as to the nature and scope of the proposed unit and the reasons for the disagreement;

- (c) the names of all labor organizations known to the petitioner who claim to represent employees in the proposed unit;

- (d) the expiration dates and brief description of any contracts covering any employees in the proposed unit;

- (e) the approximate number of employees in the proposed unit; and

- (f) any other relevant facts.

(5) The petition shall be accompanied by proof, consisting

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ing of authorization cards, or copies thereof, which have been individually signed and dated within six months prior to the filing of the petition that the desire for organization represents 30 percent of the employees in the proposed unit. (6) The board shall serve a copy of the petition upon the public employer. (History: Sec. 39-31-104, MCA; IMP 39-31-207, MCA; NEW, Eff. 6/4/74.)

Rule 24.26.613 Reserved

24.26.614 EMPLOYER COUNTER PETITION (1) The employer shall have five working days from receipt of the petition in which to file a counter petition with the board.

(2) The employer shall file a counter petition when the employer disagrees with the appropriateness of the proposed unit as described in the petition.

(3) The petition shall contain:

(a) discussion of the nature of the employer's disagreement with the petitioner(s) proposed appropriate unit;

(b) description of the employer's proposed appropriate unit;

(c) the number of employees in the employer's proposed unit.

(d) the expiration dates and brief description of any contracts covering any employees in the employer's proposed unit, and

(e) any other relevant facts.

(4) The board shall serve a copy of the counter petition upon the petitioner. (History: Sec. 39-31-104, MCA; IMP 39-31-207, MCA; NEW, Eff. 5/4/74.)

Rule 24.26.615 Reserved

24.26.616 NOTICE OF UNIT DETERMINATION PROCEEDINGS (1)

The board shall require the employer to post in a conspicuous manner a notice of unit determination proceedings. Such notice shall be provided by the board and shall remain posted for a period of 60 days.

(2) The employer shall confirm in writing to the board that it has received, posted and shall continue posting of the notice for the required 20 days. (History: Sec. 39-31-104, MCA; IMP 39-31-207, MCA; NEW, Eff. 6/4/74.)

Rule 24.26.617 Reserved

24.26.618 PETITION TO INTERVENE (1) Within 20 days

from the first day of posting of the notice of unit determination proceedings, any labor organization or group of employees may file a petition to intervene.

(2) The petition shall contain the name and address of petitioner.

(3) The petition shall be accompanied by proof of interest consisting of authorization cards, or copies thereof, which have been signed and dated within 6 months prior to the filing of the petition representing 10 percent of the employees in the unit.

(4) The petition to intervene shall conform in all other respects to the requirements for a petition for new unit determination and election.

(5) The board shall serve a copy of the petition to intervene upon all other parties. (History: Sec. 39-31-104, MCA; IMP 39-31-207, MCA; NEW, Eff. 6/4/74.)

Rule 24.26.619 Reserved

24.26.620 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION (1) The board shall

direct an investigation of all questions and facts concerning the proposed unit, and shall have the following options:

(a) to direct a unit determination hearing within 20 days after time for intervening has passed; or

(b) to dispense with a unit determination hearing at its sole discretion, under the following conditions:

(i) the employer has not filed a counter petition;

(ii) no intervenors contest the petitioner's proposed unit structure.

(2) After a hearing, the board shall issue its determination of the appropriate unit. If a unit petitioned for is found not to be appropriate, the findings and conclusions shall give specific reasons therefor. If the unit is found to be appropriate, the board shall schedule the election and a pre-election conference at which time challenges for individual inclusions and exclusions shall be made by either party. (History: Sec. 39-31-104, MCA; IMP 39-31-207, MCA; NEW, Eff. 6/4/74.)

Rule 24.26.621 Reserved

24.26.622 EMPLOYER PETITION (1) A petition may be filed with the board by an employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

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(2) The original petition shall be signed by petitioner or its authorized representative.

(3) The original petition shall be filed with the board.

(4) The petition shall contain:

(a) A statement naming all parties making a claim to the employer to be recognized as the exclusive representative and bargaining agent and a concise statement of how that demand for recognition took place.

(b) If there is a recognized or certified representative the petition shall contain a statement by the employer of what criteria it bases its doubt that the majority exclusive representative does not have the majority support of the members of the bargaining unit in question.

(c) A description of the unit the bargaining representative is demanding to represent. Such description shall include:

(i) The approximate number of employees in the unit, and

(ii) an enumeration, by job title, of the unit's inclusions and exclusions.

(d) A brief description, including expiration dates, of all contracts covering employees in the proposed unit.

(e) Any other relevant facts.

(5) The employer petition must be filed:

(a) not more than 90 days before, and not less than 60 days before the termination date of the previous collective bargaining agreement, or after the termination of the existing collective bargaining agreement. An employer petition of a bargaining unit comprised of school employees may only be filed in January of the year the existing collective bargaining agreement is scheduled to terminate, or after the termination of the existing collective bargaining agreement; or

(b) when the incumbent bargaining representative gives notice to the employer that it desires to begin negotiations of a successor agreement.

(6) If after investigating the matters alleged in the petition, this board finds that there has been a sufficient demand for recognition made of the employer, and where applicable that there are sufficient, objective criteria for the employer to, in good faith, doubt the certified or recognized bargaining representative's majority status, then this board shall serve a copy of the petition on all parties named as claiming to be the exclusive representative and bargaining agent.

(7) The refusal to serve a petition is appealable to the full board if written exception to the refusal is filed

with this board within 20 days after the date of the notification of the refusal to serve the petition.
(8) The same right of intervention shall exist for an employer petition as exists for unit determination petitions. (Hist. 39-31-104, MCA; IMP 39-31-207(1)(b), MCA; NEW 1978 MAR P. 516, Eff. 4/25/78; AMD, 1979 MAR P. Eff. 11/29/79.)

Rules 24.26.623 through 24.26.629 Reserved

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Unit Clarifications

24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT.

(1) A Petition for Clarification of Bargaining Unit may be filed with the board only by a bargaining representative of the unit in question or by a public employer and only if:

(a) there is no question concerning representation; (b) the parties to the agreement are neither engaged in negotiations nor within 120 days of the expiration date of the agreement;

(c) a petition for clarification has not been filed with the board concerning substantially the same unit within the past 12 months immediately preceding the filing of the petition; and

(d) no election has been held in substantially the same unit within the past 12 months immediately preceding the filing of the petition.

(2) A copy of any such petition shall be served by the board upon the bargaining representative if filed by a public employer and upon the employer if filed by a bargaining representative.

(3) A Petition for Clarification of an existing bargaining unit shall contain the following:

(a) the name and address of the bargaining representative involved;

(b) the name and address of the public employer involved;

(c) the identification and description of the existing bargaining unit;

(d) a description of the proposed clarification of the unit;

(e) the job classification(s) of employees as to whom the clarification issue is raised, and the number of employees on each such classification;

(f) a statement setting forth the reasons why petitioner desires a clarification of the unit;

(g) a statement that no other employee organization is certified to represent any of the employees who would be directly affected by the proposed clarification;

(h) a brief and concise statement of any other relevant facts; and

(i) the name, affiliation, if any, and the address of petitioner.

(4) The party on whom the petition was served shall have 20 days to file a response with this board.

(5) Upon a determination that a question of fact exists, this board may set the matter for hearing. Upon completion

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of the hearing this board may:

(a) grant the petitioned for clarification in whole or in part; or

(b) deny the petitioned for clarification in whole or in part. (History: Sec. 39-31-104, MCA; IMP 39-31-207. MCA; NEW, 1978 MAR p. 513, Eff. 4/25/78.)

Rules 24.26.631 through 24.26.642 Reserved

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24.26.644

Petitions for Decertification

24.26.643 PETITION FOR DECERTIFICATION (1) A petition for decertification of an exclusive representative shall be filed by an employee, a group of employees, or a labor organization, provided that 12 months have elapsed since the last election.

(2) The petition must be filed not more than 90 days before, and not less than 60 days before the termination date, and previous collective bargaining agreement, or upon the terminal date thereof.

(3) A petition seeking decertification of a bargaining unit comprised of school employees may only be filed January of the year the existing collective bargaining agreement is scheduled to terminate, or after the termination of the existing collective bargaining agreement.

(4) The original petition shall be signed by the petitioner(s) or their authorized representative.

(5) The original petition and five copies of the petition shall be filed with the board.

(6) The petition shall contain:

(a) the name and address of petitioner(s);

(b) a statement that the labor organization that has been certified or is currently being recognized by the employer as bargaining representative no longer represents the interests of the majority of the employees in the unit;

(c) the name of the labor organization, if any, which claims to be the majority representative;

(d) a description of the bargaining unit involved and the approximate number of employees; and

(e) any other relevant facts.

(7) The petition shall be accompanied by proof that 30 percent of the employees in the unit do not desire to be represented by the existing exclusive representative. This proof will consist of authorization cards, or copies thereof, which have been individually signed and dated within six months prior to the filing of the petition.

(8) The board shall serve a copy of the petition upon the labor organization(s) concerned, and upon the public employer. (History: Sec. 39-31-104, MCA; IMP 39-31-207, MCA; NEW, Eff. 6/4/74; AMD Eff. 11/24/76; AMD 1978 MAR p. 74, Eff. 2/24/78.)

24.26.644 ANSWER (1) Each party may file an answer to the petition for decertification within five working days after receipt thereof.

(2) The composition of the unit is not a proper matter to be considered in a decertification proceeding. Eligible

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voters for any decertification election shall be those who are members of the bargaining unit at the time of the filing of the petition. (History: Sec. 39-31-104, MCA; IMP 39-31-207, MCA; NEW, Eff. 6/4/74; AMD 1979 MAR p.1495 Eff. 11/30/79.)

24.26.645 NOTICE OF DECERTIFICATION PROCEEDINGS (1) The board shall require the employer to post in a conspicuous manner, a notice of decertification proceedings. Such notice shall be provided by the board and shall remain posted for a period of 20 days.

(2) The employer shall confirm in writing to the board that it has received, posted, and shall continue posting of the notice for the required 20 days. (History: Sec. 39-31-104, MCA; IMP 39-31-207, MCA; NEW, Eff. 6/4/74.)

24.26.646 PETITION TO INTERVENE (1) Any labor organization or group of employees may file a petition to intervene within 20 days of the first day of posting of the notice of decertification proceedings.

(2) The original petition shall be signed by the petitioner(s) or their authorized representative.

(3) The original petition and five copies of the petition shall be filed with the board.

(4) The petition shall contain the name and address of petitioner(s).

(5) The petition shall be accompanied by proof of interest representing ten percent of the employees in the unit. This proof will consist of authorization cards, or copies thereof, which have been individually signed and dated within six months prior to the filing of the petition.

(6) The petition to intervene shall conform in all other respects to the requirements for a petition for decertification.

(7) The board shall serve a copy of the petition to intervene upon all other parties. (History: Sec. 39-31-104, MCA; IMP 39-31-207, MCA; NEW, Eff. 6/4/74.)

24.26.647 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION (1) The board shall direct an investigation of all questions and facts concerning the proposed decertification and shall have the following options:

(a) to direct a hearing if deemed appropriate, after which the election and a pre-election conference shall be scheduled; or

(b) to schedule the election and a pre-election conference. (History: Sec. 39-31-104, MCA; IMP 39-31-207, MCA; NEW, Eff. 6/4/74.)

24.26.648 DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE (1) After one year from the date of certification by this board or recognition by an employer as the bargaining representative and after the filing of a petition for decertification by an employee or group of employees an incumbent bargaining agent may submit to this board an affidavit of disaffirmance of representation stating it no longer desires to represent the bargaining unit in question.

(2) Upon the filing of such an affidavit the bargaining representative's name shall be removed from the ballot in the decertification election. If no other bargaining representative appears on the ballot, no election shall be conducted. (History: Sec 39-31-104, MCA; IMP 39-31-207, MCA; NEW, 1979 MAR p.1495, Eff. 11/30/79.)

Rules 24.26.649 through 24.26.654 Reserved

Elections

24.26.655 ELECTION DIRECTED (1) The board shall direct an election to be conducted by an agent of the board where an appropriate unit has been determined and a question of representation exists or where a petition for an election has been filed. The election shall be conducted under the direction and supervision of the board with all determinations made by an agent subject to review by the board of personnel appeals by an aggrieved party. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/5/74.)

24.26.656 CONDITIONS (1) All elections shall be held at such times and places and upon such terms as the board may specify. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.657 SECRET BALLOT (1) All elections shall be by secret ballot. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.658 ELIGIBLE VOTERS (1) The employees eligible to vote shall be those within the unit on the date of the filing of the petition excluding those employees who have voluntarily terminated their employment between the filing date and the date of the election.

(2) At least seven days prior to the election, the employer shall furnish to each labor organization which is party to the proceeding, a list of names and addresses of the employees eligible to vote. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.659 NOTICE (1) Not more than 20 calendar days nor less than 10 calendar days prior to any election set by the board, the board shall cause to be prepared and distributed a Notice of Election specifying the date and place thereof, the hours the polls will be open; the classification of employees in the appropriate unit for which the election is to be conducted; rules concerning eligibility to vote a sample ballot; and such additional information and instruction as the board may consider appropriate. Copies of the Notice of Election and the sample ballot will be sent to all labor organizations appearing on the ballot and to the public employer. The public employer shall cause copies of the Notice of Election and the sample ballot to be posted for at least five working days prior to the election at work locations where notices are normally posted for the benefit

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of employees in the appropriate unit. The posting requirement may be modified by mutual agreement of management and the parties appearing on the ballot. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.660 **BALLOTS** (1) The rank order of the employee organization names to be placed on the ballot will be determined during the pre-election hearing. "No Representation" will always be listed as the last choice. (2) Only those labor organizations which have been designated by more than ten percent of the employees in the unit shall be placed on the ballot.

(3) Absentee ballots shall not be allowed. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.661 **POLL WATCHERS** (1) Each party to the election shall be entitled to be represented by an equal number of observers watching at each polling place. Observers shall be employees eligible to vote, or in the case of employer's observers, shall be any appropriate persons who are not on the list of eligible voters. Each party may observe the ballot counting. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.662 **POLLING AREA ELECTRONERING** (1) Prior to the commencement of the election the agent of the board shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.663 **CHALLENGES** (1) All employees whose names appear on the list certified by the board as being a complete list of the employees within the defined appropriate unit shall be eligible to vote.

(2) Any prospective voter may be challenged for cause. (3) All employees whose names do not appear upon the list certified by the board as being a complete list of the employees within the defined appropriate unit shall be challenged by the agent of the board.

(4) A challenged voter shall be permitted to vote but his ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the agent of the board and then inserted in a special identifiable form envelope provided by the board for that purpose and returned to the board. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

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24.26.664 **MAJORITY** (1) In all elections, a majority of the valid votes cast shall determine the employees' representative to be certified. In the case of a tie vote, no certification shall be issued. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.665 **RUNOFF** (1) The board shall conduct a runoff election when an election in which the ballot provides for not less than three choices (i.e., at least two representatives and no representative) results in no choice receiving a majority of the valid ballots cast. (2) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes in the previous election.

(3) Those eligible to vote in the original election shall be eligible to vote in the runoff election. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.666 **OBJECTIONS** (1) Within five working days after the tally of ballots has been furnished, any party may file with the board, objections to the conduct of the election or conduct affecting the results of the election. Such objections shall be in writing and shall contain a brief statement of facts upon which the objections are based. An original and five copies of such objections shall be signed and filed with the board, the original being sworn to. The party filing an objection shall serve a copy upon each of the other parties to the election. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.667 **CERTIFICATION** (1) If no objections are filed within the time set forth above, if the challenged ballots are insufficient in number to affect the result of the election and if no runoff election is to be held, the board shall forthwith issue to the parties a certification of representative, where appropriate. (2) In order to be eligible to be certified by the board as the exclusive representative for an bargaining unit that existed before July 1, 1973 and is presently in existence, the employee organization must submit five copies of their claim. (History: Sec. 39-31-104, MCA; IMP 39-31-208, MCA; NEW, Eff. 6/4/74.)

Rules 24.26.668 through 24.26.679 Reserved

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BOARD OF PERSONNEL APPEALS 24.26.682
Unfair Labor Practice Charges

24.26.680 COMPLAINT (1) A complaint alleging that a person has engaged in or is engaging in an unfair labor practice may be filed by an employee, a group of employees, a labor organization or a public employer within six months thereof.

(2) A complaint shall be in writing. The original shall be signed and verified by the complainant or his authorized representative. The original and five copies of the complaint shall be filed with the board. The board shall serve one copy of the complaint on each party named in the complaint.

(3) A complaint shall contain the following:

- (a) the name, address and telephone number of the complainant;
 - (b) the name, address and telephone number of the party against whom the charge is made; and
 - (c) a clear and concise statement of facts constituting the alleged violation, including the time and place of the occurrence of the particular acts and a statement of the portion or portions of the law or rules alleged to have been violated.
- (4) If the board determines that the facts alleged in the complaint do not constitute an unfair labor practice under section 39-31-401 and 39-31-402, MCA, it shall dismiss the charge. (History: Sec. 39-31-104, MCA; IMP 39-31-406, MCA; NEW, Eff. 6/4/74.)

24.26.681 ANSWER (1) The party named in the complaint shall file a written verified answer within ten days after service of the complaint.

- (2) One copy of the answer shall be served on the complainant, and the original, with proof of due service and five copies, shall be filed with the board.
- (3) The answer shall include a specific admission, denial, or explanation of each allegation in the complaint.
- (4) If the party charged fails to file a timely answer, the board may consider it an admission of material facts and waive of a hearing. (History: Sec. 39-31-104, MCA; IMP 39-31-406, MCA; NEW, Eff. 6/4/74.)

24.26.682 NOTICE OF HEARING (1) After the time for filing an answer has passed, the board shall serve a notice of hearing upon the parties. The hearing date shall not be less than five nor more than 20 working days from the date of service. The notice shall include all those items listed

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in section 2-4-601, MCA, and shall state whether the board or agent of the board will hear the complaint. (History: Sec. 39-31-104, MCA; IMP 39-31-406, MCA; NEW, Eff. 6/4/74.)

24.26.683 PROPOSED FINDINGS (1) The board may request proposed findings of fact and conclusions of law. (History: Sec. 39-31-104, MCA; IMP 39-31-406, MCA; NEW, Eff. 6/4/74.)

24.26.684 EXCEPTIONS (1) If a majority of the board have not heard the case, the person who conducted the hearing shall serve a proposed decision and order upon the parties who shall have 20 days to file exceptions and present briefs and oral arguments to the entire board. (History: Sec. 39-31-104, MCA; IMP 39-31-406, MCA; NEW, Eff. 6/4/74.)

Rules 24.26.685 through 24.26.694 Reserved

Impasse

24.26.695 PETITION (1) In the event of an impasse, a petitioner in writing requesting assistance of the board, may be filed with the board by an employee or employees, a labor organization or employee organization. The original of the petition shall be signed by the petitioner or his authorized representative, and the original and five copies thereof shall be filed with the board. The petitioner shall serve a copy of the petition simultaneously upon any party in the petition. The petition shall contain:

- (a) name, address, and telephone number of petitioner or authorized representative;
 - (b) name address, and telephone number of public employer;
 - (c) description of unit involved;
 - (d) name, address, and telephone number of the recognized or certified labor organization and authorized representative thereof;
 - (e) description of the dispute in detail;
 - (f) statement as to what assistance is requested; and
 - (g) statement indicating if the request is unilateral or joint.
- (2) A petition may be withdrawn with the consent of the board. (History: Sec 39-31-104, MCA; IMP 39-31-307; and 39-31-308, MCA; NEW, Eff. 6/4/74.)

24.26.696 MEDIATION (1) Upon petition, the board, any member or employee thereof designated by the board, or any other competent, impartial, disinterested person designated by the board may act as the mediator in a dispute or, if available, the board may request a mediator from the Federal Mediation and Conciliation Service or from the American Arbitration Association.

(2) Any information disclosed to the mediator in the performance of his duties shall not be divulged unless approved by the parties involved. All files, records, reports, documents, or other papers received or prepared by the mediator shall be classified as confidential and not as a public record. Such matters shall not be disclosed to anyone without the prior consent of the board.

(3) The mediator shall not produce any confidential records or destroy them with regard to any mediation conducted by him on behalf of the party, any case pending in any proceeding before any court, board, investigatory body, arbitrator, or fact finder without the written consent of the board.

(4) The mediator may hold separate or joint meetings

with the parties or their representatives, and such meetings shall be private and nonpublic, except if otherwise mutually agreed upon by the parties.

(5) The mediator shall, within 30 days of his designation, report in writing the progress of his mediation efforts, as well as the terms of the settlement of the dispute, if any, to the board. (History: Sec 39-31-104, MCA; IMP 39-31-307, MCA; NEW, Eff. 6/4/74.)

24.26.697 FACT FINDER (1) Either party to a dispute may petition the board to initiate fact finding or, if it is apparent that matters in disagreement might be more readily settled if facts involved were determined and publicly known, the board may initiate fact finding in accordance with section 39-31-308, MCA.

(2) Within three days of receipt of a petition for fact finding, the board shall submit a list of five qualified, disinterested persons to each of the parties to the dispute. (3) Within five days of receipt of the list, the parties shall select a fact finder by having the petitioner strike two names and then the other party strike two names. The remaining name is that of the fact finder.

(4) The parties shall immediately notify the board of the name of the fact finder. The board shall notify the fact finder and request him to immediately establish dates and places of hearings.

(5) Within 20 days from his notification by the board, the fact finder shall make written findings of fact and recommendations for resolution of the dispute. The findings shall be served on both parties and a copy sent to the board.

(6) The fact finder may request the board to make the report public five days after the parties are served with the findings.

(7) Fifteen days after the parties are served the board shall provide that the report is open to public inspection.

(8) The fact finder shall submit his costs and fees to the board which shall send copies of an invoice to both parties on which they will be billed for one-third of the total. The parties shall pay the total amount within five days and the board shall forward the total amount to the fact finder. (History: Sec. 39-31-104, MCA; IMP 39-31-309, MCA; NEM, Eff. 6/4/74; AMD 1978, Feb. p. 192 Eff. 2/24/78.)

24.26.698 ARBITRATION (1) The parties may, at any period in the negotiations, agree to submit the issues to

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binding arbitration in accordance with Section 39-31-310, MCA. (2) Both parties shall jointly notify the board in writing of this decision and of the identity of the arbitrator.

(3) The parties may petition the board to assist in the selection of the arbitrator in accordance with 26.24.595.

(4) The arbitrator shall render a decision within 30 days of his appointment. (History: Sec. 39-31-104, MCA; IMP 39-31-310, MCA; NEW, Eff. 6/4/74.)